# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

RUSSELL G. BELDEN and A. EUGENE WAY-LAND,

Plaintiffs in Error,

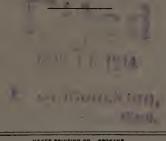
vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

# Transcript of Record

Upon Writ of Error to the United States District Court for the Eastern District of Washington, Northern Division.





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# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

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Plaintiffs in Error,

vs.

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# Transcript of Record

Upon Writ of Error to the United States District Court for the Eastern District of Washington, Northern Division.



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#### Names and Addresses of Attorneys of Record.

ROBERTSON & MILLER, Hyde Block, Spokane, Washington,

Attorneys for Plaintiffs in Error.

- FRANCIS A. GARRECHT, United States District Attorney for the Eastern District of Washington, Federal Building, Spokane, Washington, and
- F. L. STOTLER, Assistant United States Attorney, Federal Building, Spokane, Washington, Attorneys for Defendant in Error.

In the District Court of the United States for the Eastern District of Washington, Northern Division.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

R. G. BELDEN and A. E. WAYLAND,

Defendants.

#### Order Extending Time for Filing Printed Record.

This cause coming on duly and regularly to be heard on this 3rd day of September, A. D. 1914, on motion of the appellants for an order granting thirty days additional time from the time of certifying the Bill of Exceptions in the above entitled cause, within which to prepare and file the printed record in the above entitled cause with the Clerk of the Circuit Court of Appeals for the 9th Judicial Circuit at San Francisco, California, and good cause appearing therefor, and the Court being fully advised in the premises,

#### 2 Russell G. Belden and A. Eugene Wayland vs.

IT IS ORDERED that said motion be, and the same is hereby given thirty days from the time of certifying the Bill of Eceptions by the Court, in the above entitled cause, within which to file the printed record in the above entitled case with the said Clerk at San Francisco, California.

Dated this 3rd day of September, A. D. 1914.

[Endorsements]: Order extending time to print record.

(Signed) FRANK H. RUDKIN, Judge.

Filed in the U.S. Circuit Court of Appeals for the

Ninth	Circuit	191	4.
			Clerk.

In the District Court of the United States, Eastern District of Washington, Northern Division.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN, and A. EUGENE WAYLAND,

Defendants.

No. 1881.

INDICTMENT—Vio. Sec. 215 Penal Code. (Use of Mails to defraud.)

A True Bill,

GEO. T. CRANE, Foreman.

United States of America, Eastern District of Washington, Northern Division, United States District Court, September, 1913, Term.

#### First Count

The Grand Jurors of the United States, chosen, selected and sworn in and for the Northern Division of the Eastern District of Washington, upon their oaths present:

That RUSSELL G. BELDEN and A. EUGENE WAYLAND (hereinafter referred to as the defendants, and who are intended and referred to whenever the words defendants may hereafter appear in this indictment), On the 18th day of January, A. D. one

thousand nine hundred and eleven, in the Northern Division of the Eastern District of Washington and within the jurisdiction of this Court, having theretofore devised and intending to devise a scheme and artifice to defraud one, John Neiderer, and divers other persons to the Grand Jurors unknown, being all such persons from whom said defendants could or might obtain money or property by means of said scheme and artifice and the divers false and fraudulent pretenses, representations and promises hereinafter set forth, and being all of such persons with whom said defendants might or could get into communication through the United States mails, which said scheme and artifice to defraud was to be effected by the use and misuse of the United States Post Office establishment, intending to incite and induce such persons so intended to be defrauded, by means of printed circulars, letters and reports distributed through the mail, deposited and caused to be deposited in the said United States mail for mailing and delivery to such divers persons so intended to be defrauded, and by whatsoever other means as might occur to them as most practicable and feasible, to induce and incite the persons intended to be defrauded to open correspondence with them, the said defendants and with the severl corporations herein mentioned organized for the purpose of aiding in the execution of said scheme to defraud, which said scheme and artifice to defraud so devised, and intended to be devised, by said defendants, and each of them, was substantially as follows:

That said defendants would cause to be organized and incorporated a corporation to be known and styled the International Development Company, which was to be controlled, managed and directed by said defendants, and each of them, and that the purpose of said corporation, among other things, should and would be to act as the fiscal agent of certain other corporations, and other firms and companies thereafter to be incorporated and organized and controlled by said defendants as a part of said scheme to defraud and to more effectually aid in the execution of said scheme.

That it was a part of said scheme that said defendants would, by themselves and through said International Development Company, and by other means under their control, procure, and cause to be procured and obtained, certain alleged coal claims having little or no value, situate in British Columbia, Dominion of Canada, and would cause to be organized and incorporated a corporation to be known as the Michel Coal Mines, Limited, with a capital stock of one million five hundred thousand shares of the par value of one dollar each, and that thereafter they would transfer to said Michel Coal Mines, Limited, the said claims, and that in consideration therefor the said Michel Coal Mines, Limited, would issue to them individually and to the said International Development Company a large majority of the capital stock of said corporation fully paid up; and it was further a part of said scheme that said defendants would thereafter in the manner aforesaid, procure and cause to be procured and obtained other claims adjoining

the aforesaid claims, and would thereafter cause to be incorporated and organized another corporation to be known as the Crown Coal and Coke Company, with a capital stock of two million shares of the par value of one dollar each, for the purpose of taking over said coal claims, which said claims would be transferred to said Crown Coal and Coke Company, and that in consideration therefor said Crown Coal and Coke Company would issue to said defendants and the international Development Company a large amount of the capital stock of said corporation as fully paid-up stock:

And it was further a part of said scheme to defraud, that said defendants, in the manner aforesaid, would procure and cause to be procured other claims, and would thereafter cause to be incorporated and organized another corporation to be known as the Empire Coal and Coke Company, with a capital stock of one million five hundred thousand shares of the par value of one dollar each, for the purpose of taking over said coal claims, which said coal claims would be transferred by said defendants and said International Development Company to said Empire Coal and Coke Company in consideration of the transfer to said defendants and to said International Development Company of a large majority of the capital stock of said corporation fully paid up;

And it was further a part of said scheme that defendants, in the manner aforesaid, would procure and cause to be procured, a charter for the construction and operation of a railroad ostensibly to furnish transportation facilities for the product of the aforesaid alleged coal mines and to be operated in connection therewith, and would thereafter cause to be incorporated and organized a corporation to be known as the Crows' Nest and Northern Railway Company with a capital stock of twenty thousand shares of the par value of one hundred dollars each, for the purpose of taking over the said charter, which said charter would be transferred to the said Crows' Nest and Northern Railway Company in consideration of the transfer to said defendants and to the International Development Company, so under the control of said defendants, of a large amount of the capital stock of said corporation, fully paid up;

And it was further a part of said scheme that the balance of the capital stock of each of the aforesaid corporations, to-wit: The capital stock of the Michel Coal Mines, Limited; the Crown Coal and Coke Company; the Empire Coal and Coke Company, and the Crows' Nest and Northern Railway Company, not so transferred to said defendants and to the International Development Company, as aforesaid, should and would be and become the treasury stock of each of said corporations, respectively;

And it was further a part of said scheme to defraud so devised by the defendants that they should and would, from time to time, dispose of and sell for money, property and notes, large amounts of the capital stock of the various corporations aforesaid, which had been transferred to themselves and to the International Development Company aforesaid.

And it was further a part of said scheme to defraud that by means of stock ownership in the aforesaid International Development Company and by other means under the control of said defendants, that said defendants would obtain and maintain management and control of said International Development Company; and by themselves and through the said International Development Company, ownership of stock and by other means under their control, and by manipulation of the stock, books and accounts of said various corporations, said defendants would obtain and maintain control of all of the aforesaid corporations, to-wit: the Michel Coal Mines, Limited; the Crown Coal and Coke Company; the Empire Coal and Coke Company; and the Crows' Nest and Northern Railway, Company; with the intent and purpose to defraud the said divers persons.

And it was further a part of the said fraudulent scheme as so devised by said defendants that, in their own names, and in the name of the said International Development Company, their, and its officers, agents and employees, by means of letters, notices, reports, circulars, and prospectus sent and to be sent through the United States Post Office establishment; by oral representations and by whatsoever other means might occur to them as most practicable and feasible for the inducing of all persons who might or could be so induced to invest money in the purchase of shares of the

capital stock in the aforesaid various corporations, so controlled by said defendants, they, the said defendants, personally, and through their personal representatives, agents and employees, did represent, state and set forth that the stock of said various companies so organized and controlled as aforesaid, was of great value, and would become of still greater value; and that the properties owned by the said various companies were of great value and would become of still greater value as mining claims and for railroad purposes; whereas, in truth and in fact, as the defendants well knew, said property had little or no value and none of said properties had any value as mining claims or as railroad properties, except that the claims of the Crown Coal and Coke Company contained valuable deposits of coal, but the fact that the properties of the said Crown Coal and Coke Company did contain valuable deposits of coal was fraudulently used by said defendants and the said International Development Company to more effectively sell the worthless stocks of the aforesaid various corporations so held individually by said defendants and said International Development Company; and did falsely and fraudulently represent and pretend that the Michel Coal Mines, Limited, had valuable coal properties, and that the properties of the Empire Coal and Coke Company contained numerous veins of coal of very high quality, all of which was false as the defendants well knew at the time of making such representations; and did further falsely and fraudulently represent and pretend that the Crows' Nest and Northern Railway

Company had acquired a right-of-way for the construction of a railroad from the properties of the aforesaid mining corporations to the line of the Canadian Pacific Railway Company, in British Columbia, Canada, a distance of approximately fifteen miles, and would construct and operate said railroad in connection with said mines; and that the proceeds derived from the sales of stock of said corporations would be used to equip and develop said coal mines and build said railroad; and that the stocks of said corporations would greatly increase in value and said corporations would pay dividends; and that said defendants, so being in control of said various corporations, did represent that they would manage the affairs of said corporations to the best interest of all of the stockholders thereof; whereas, in truth and in fact as defendants well knew at the time of devising said scheme, and at all times in this indictment mentioned, that the Crows' Nest and Northern Railway Company had not acquired a right-of-way for its railroad as represented by them, and that the proceeds from the sales of stock of said corporations would not be, and were not, used to equip and develop the respective properties of said corporations or to build said railroad, but that a large sum realized from the sale of said stock was diverted to the use and benefit of said defendants, and that the stock of said corporations would not increase in value and said corporations would not pay dividends, and that the properties of said corporations would not be, and were not, managed and controlled for the best interest of the stockholders;

but would be, and were, managed and controlled for the sole benefit of said defendants, and each of them, with the intent and purpose to defraud the said divers persons.

And it was further a part of said scheme to represent to intending purchasers of the stock in the Empire Coal and Coke Company that with each five hundred dollar purchase of stock in said company there would be given a share of stock in the Crows' Nest and Northern Railway Company, and that of the proceeds received by said Empire Coal and Coke Company on account of said five hundred dollar purchase of stock by said divers persons, one hundred dollars would be used by the Empire Coal and Coke Company in the purchase of one share of stock in the Crows' Nest and Northern Railway Company, and the one hundred dollars so expended by said Empire Coal and Coke Company would be placed in the treasury of the said Crows' Nest and Northern Railway Company to be used in the construction of its railroad; whereas, in truth and in fact, as the defendants well knew, no part of the said one hundred dollars would be placed in the treasury of the Crows' Nest and Northern Railway Company and no part thereof would be used for the construction and development of said railroad, but would be, and was, appropriated by said defendants to their own use and benefit;

And it was further a part of said scheme that said defendants, in the false and fraudulent manner aforesaid, would hold forth, represent and pretend to the

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divers persons intended to be deceived and defrauded thereby that the stock of the said various corporations to be offered and offered for sale would be the treasury stock of said various corporations, respectively, and that the money and property obtained from the sale of said stock would be used for the equipment and development of the properties of said corporations respectively; whereas, in truth and in fact, as defendants well knew, the stock of said various corporations so sold to said divers persons was not the treasury stock of said corporations, but was, with few exceptions, the stocks held individually by said defendants and said International Development Company so acquired as aforesaid, and the money and property obtained from such sales of stock was not placed in the treasury of said various corporations for development purposes, but a large amount of said money and all of the real property so obtained was appropriated by said defendants and the International Development Company to their own use and benefit, it being the intent and purpose of said defendants so having obtained large amounts of stocks having no commercial or marketable value and so having falsely represented that the property of the said various corporations was of great and immense value, and having so falsely pretended and represented that treasury stock was being sold and that the proceeds would be used for development purposes, to sell the said worthless stock's individually owned by said defendants, and each of them, and by the said International Development Company, so owned and controlled by said defendants, and to divert the vast

amount of property and a large amount of the money obtained, from the sale of said stocks to the use and benefit of the defendants and the said International Development Company, with the intent and purpose to defraud the said John Neiderer, and said divers persons.

And the said defendants, on or about the twenty-first day of January, one thousand nine hundred and eleven, at and in the Division and District aforesaid, for the purpose of executing said scheme and artifice, and attempting so to do, knowingly, willfully and feloniously, placed, and caused to be placed, in the Post Office of the United States, at Spokane, Washington, for mailing and delivery, a certain letter then and there addressed and directed to Mr. Jno. Neiderer, Summerville, Oregon, as follows, to-wit:

R. G. Belden, Jas. A. Williams, A. E. Wayland, President Vice-President. Sec'y-Treas.

Industrial Securities CAPITAL

General Financing \$250,000

INTERNATIONAL DEVELOPMENT COMP'Y P.O. Box 714 622-626 Peyton Block Phone Main 2142. Spokane, Wash.

January Eighteenth 1911

Mr. John Neiderer, Summerville, Ore. Dear Sir:

Your letter of the 16th inst. at hand with enclosure

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of \$506.70, in payment of your two notes amounting to \$505. We are herewith returning postal money order for \$1.70 interest, owing to your having made the payment so promptly.

I am not returning the notes herewith, but am holding them as it occurred to me that it was an excellent opportunity for you to allow these two notes to stand and have more stock issued to you for them.

In other words, the date of the notes will allow me to pass them in as sales under the old prices which would be considerable saving to you.

For instance, the Empire is selling for 50c, while under this plan you would get it for 35c. The Crown is selling for \$1.00, and under this plan you would get it for 75c. You can readily see what a saving you would be making. You can select either stock you wish and I will protect you on it. However, if you decide that you should not want to do this, I will return the notes promptly to you. This would mean 674 shares in the Crown and it would mean a saving of \$169.00 to you over the present price. In the Empire it would give you 1443 shares or a saving of \$216.50 on the stock at the price it is today.

You understand, Mr. Neiderer, that we are not accepting any sales now, other than the 50c and \$1.00 price, and it is due to the peculiar circumstances of your money coming in at this time that I am figuring this way, and I am giving you the same benefit as you would have, were you an officer of the company. I also do it on account of your connection with Mr.

Hopson, and, by the way, we had our annual meeting yesterday, and Mr. Hopson was made a director and will be the Treasurer. He will hold these notes in his possession and would have no worry whatever in regard to their pressing you, as you will be dealing with him personally.

You certainly should make use of this opportunity for it is just the same as making that much money, and besides that, it will mean a great deal more as the stock continues to advance.

There is no doubt, Mr. Neiderer, but what Mr. Hopson and myself have been unable to make you fully realize just what valuable properties we have there. If you did, you certainly would be pleased at this opportunity.

Kindly let me know at once so that I may protect you in the matter.

Very truly yours,
INTERNATIONAL DEVELOPMENT CO.,
RGB|RC. Per R. G. Belden

P.S.—I am enclosing a copy of the Hower & Greene report. After you folks have read this over carefully, will ask you to kindly return it.;

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

#### Second Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That RUSSELL G. BELDEN and A. EUGENE WAYLAND (hereinafter referred to as the defendants, and who are intended and referred to whenever the word defendants may hereafter appear in this indictment), on the twenty-first day of January, A. D. one thousand nine hundred and eleven, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this Court, having theretofore devised and intending to devise a scheme and artifice to defraud one, Walter J. Wood, and divers other persons to the Grand Jurors unknown, being all such persons from whom said defendants could or might obtain money or property by means of said scheme and artifice and the divers false and fraudulent pretenses, representations and promises hereinafter set forth, and being all of such persons with whom said defendants might or could get into communication through the United States mails, which said scheme and artifice to defraud was to be effected by the use and misuse of the United States Post Office establishment, intending to incite and induce such persons so intended to be defrauded, by means of printed circulars, letters, and reports distributed through the mail, deposited and caused to be deposited in the said United States mail, for mailing and delivery to such divers persons so intended to be defrauded, and by whatsoever other means as might occur to them as most practicable and feasible, to induce and incite the persons intended to be defrauded to open correspondence with them, the said defendants, and with the several corporations herein mentioned organized for the purpose of aiding in the execution of said scheme to defraud, which said scheme and artifice to defraud so devised, and intended to be devised, by said defendants, and each of them, was substantially as follows:

That said defendants would cause to be organized and incorporated a corporation to be known and styled the International Development Company, which was to be controlled, managed and directed by said defendants, and each of them, and that the purpose of said corporation, among other things, should and would be to act as the fiscal agent of certain other corporations, and other firms and companies thereafter to be incorporated and organized and controlled by said defendants as a part of said scheme to defraud and to effectually aid in the execution of said scheme.

That it was a part of said scheme that said defendants would, by themeslves and through said International Development Company, and by other means under their control, procure, and cause to be procured and obtained, certain alleged coal claims, having little or no value, situate in British Coumbia, Dominion of Canada, and would cause to be organized and incorporated a corporation to be known as the Michel Coal Mines, Limited, with a capital stock of one million five hundred thousand shares of the par value of one dollar each, and that thereafter they would transfer to said Michel Coal Mines, Limited, the said claims,

and that in consideration therefor the said Michel Coal Mines, Limited, would issue to them individually and to the said International Development Company a large majority of the capital stock of said corporation fully paid up;

And it was further a part of said scheme that said defendants would thereafter, in the manner aforesaid, procure and cause to be procured and obtained, other claims adjoining the aforesaid claims, and would thereafter cause to be incorporated and organized another corporation to be known as the Crown Coal and Coke Company, with a capital stock of two million shares of the par value of one dollar each, for the purpose of taking over said coal claim, which said claims would be transferred to said Crown Coal and Coke Company and that in consideration therefor said Crown Coal and Coke Company would issue to said defendants and the International Development Company a large amount of the capitl stock of said corporation as fully paid up stock;

And it was further a part of said scheme to defraud, that the said defendants, in the manner aforesaid, would procure, and cause to be procured, other claims, and would thereafter cause to be incorporated and organized another corporation to be known as the Empire Coal and Coke Company, with a capital stock of one million five hundred thousand shares of the par value of one dollar each, for the purpose of taking over said coal claims, which said coal claims would be transferred by said defendants, and said

International Development Company to said Empire Coal and Coke Company in consideration of the transfer to said defendants and to said International Development Company of a large majority of the capital stock of said corporation fully paid up.

And it was further a part of said scheme that the defendants, in the manner aforesaid, would procure and cause to be procured, a charter for the construction and operation of a railroad ostensibly to furnish transportation facilities for the product of the aforesaid alleged coal mines, and to be operated in connection therewith, and would thereafter cause to be incorporated and organized a corporation to be known as the Crows' Nest and Northern Railway Company with a capital stock of twenty thousand shares of the par value of one hundred dollars each, for the purpose of taking over said charter, which said charter would be transferred to the said Crows' Nest and Northern Railway Company in consideration of the transfer to the said defendants and to the International Development Company so under the control of said defendants, of a large amount of the capital stock of said corporation fully paid up;

And it was further a part of said scheme that the balance of the capital stock of each of the aforesaid corporations, to-wit: the capital stock of the Michel Coal Mines, Limited; the Crown Coal and Coke Company; the Empire Coal and Coke Company, and the Crows' Nest and Northern Railway Company, not so transferred to said defendants and to the Interna-

tional Development Company as aforesaid, should and would be and become the treasury stock of each of said corporations, respectively:

And it was further a part of said scheme to defraud so devised by the defendants that they should and would, from time to time, dispose of and sell for money, property and notes, large amounts of the capital stock of the various corporations aforesaid, which had been transferred to themselves and to the International Development Company aforesaid;

And it was further a part of said scheme to defraud that by means of stock ownership in the aforesaid International Development Company and by other means under the control of said defendants, that said defendants would obtain and maintain management and control of said International Development Company; and by themselves, and through the said International Development Company, ownership of stock and by other means under their control, and by manipulation of the stocks, books and accounts of said various corporations, said defendants would obtain and maintain control of all of the aforesaid corporations, to-wit: the Michel Coal Mines, Limited; the Crown Coal and Coke Company; the Empire Coal and Coke Company; and the Crows' Nest and Northern Railway Company, with the intent and purpose to defraud the said divers persons;

And it was further a part of the said fraudulent scheme as so devised by said defendants that, in their own names, and in the names of the said International Development Company, their, and its officers, agents and employees, by means of letters, notices, reports, circulars and prospectus, sent and to be sent through the United States Post Office establishment; by oral representations and by whatsoever other means might occur to them as most practicable and feasible for the inducing of all persons who might or could be so induced to invest money in the purchase of shares of the capital stock in the aforesaid various corporations, so controlled by said defendants, they, the said defendants, personally, and through their personal representatives, agents and employees, did represent, state and set forth that the stock of said various companies so organized and controlled as aforesaid, was of great value, and would become of still greater value; and that the properties owned by the said various companies were of great value and would become of still greater value as mining claims and for railroad purposes; whereas, in truth and in fact, as the defendants well knew, said properties had little or no value, and none of said properties had any value as mining claims or as railroad properties, except that the claims of the Crown Coal and Coke Company, contained valuable deposits of coal, but the fact that the properties of the said Crown Coal and Coke Company did contain valuable deposits of coal was fraudulently used by said defendants and the International Development Company to more effectively sell the worthless stocks of other aforesaid various corporations so held individually by said defendants and said International Development Company, and did falsely and fraudulently represent and pretend that the Michel Coal Mines, Limited, had valuable coal property, and that the properties of the Empire Coal and Coke Company contained numerous veins of coal of very high quality, all of which was false, as the defendants well knew when making such representations, and did further falsely and fraudulently represent and pretend that the Crows' Nest and Northern Railway Company had acquired a right-of-way for the construction of a railroad from the property of the aforesaid mining corporations to the line of the Canadian Pacific Railway Company, in British Columbia, Canada, a distance of approximately fifteen miles, and would construct and operate said railroad in connection with said mines; and that the proceeds derived from the sales of stock of said corporations would be used to equip and develop said coal mines and build said railroad; and that the stocks of said corporations would greatly increase in value and said corporations would pay dividends; and that said defendants, so being in control of said various corporations, did represent that they would manage the affairs of said corporations to the best interest of all of the stockholders thereof; whereas, in truth and in fact, as the defendants well knew at the time of devising said scheme, and at all times in this indictment mentioned, that the Crows' Nest and Northern Railway Company had not acquired a rightof-way for its railroad as represented by them, and that the proceeds from the sales of said stock of said corporations would not be, and were not, used to equip and develop the respective properties of said corporations or to build said railroad, but a large sum realized from the sale of said stock was diverted to the use and benefit of said defendants and the International Development Company, and that the stock of said corporations would not increase in value and said corporations would not pay dividends; and that the properties of said corporations would not be, and were not managed and controlled for the best interest of the stockholders; but would be, and were, managed and controlled for the sole benefit of said defendants, and each of them, and the International Development Company, with the intent and purpose to defraud the said divers persons.

And it was further a part of said scheme to represent to intending purchasers of the stock in the Empire Coal and Coke Company that with each five hundred dollar purchase of stock in said company there would be given a share of stock in the Crows' Nest and Northern Railway Company, and that of the proceeds received by said Empire Coal and Coke Company on account of said five hundred dollar purchase of stock by said divers persons, one hundred dollars would be used by the Empire Coal and Coke Company in the purchase of one share of stock in the Crows' Nest and Northern Railway Company, and the one hundred dollars so expended by the Empire Coal and Coke Company would be placed in the treasury of the Crows' Nest and Northern Railway Company to be used in the construction of its railroad; whereas, in truth and in fact, as the defendants well knew at the time of making such representations, that no part of

the said one hundred dollars would be placed in the treasury of the Crows' Nest and Northern Railway Company and no part thereof would be used for the construction and development of said railroad, but would be, and was, appropriated to the use and benefit of the said defendants and the International Development Company.

And it was further a part of said scheme that said defendants, in the false and fraudulent manner aforesaid, would hold forth, represent and pretend to the divers persons intended to be deceived and defrauded thereby, that the stock of the said various corporations to be offered and offered for sale would be the treasury stock of said various corporations, respectively, and that the money and property obtained from the sale of said stock would be used for the equipment and development of the properties of said corporations, respectively; whereas, in truth and in fact, as defendants well knew at the time of making such representations, the stock of said various corporations offered and sold to divers persons was not the treasury stock of said corporations, but was, with few exceptions, the stocks held individually by said defendants and said International Development Company, so acquired as aforesaid, and the money and property obtained from such sales of stock was not placed in the treasury of said various corporations for development purposes, but a large amount of said money and all of the real property so obtained was appropriated by said defendants and the International Development Company to their own use and benefit, it being the intent and purpose of said defendants so having obtained large amounts of stock having no commercial or marketable value, and so having falsely represented that the property of said various corporations was of great and immense value, and having so falsely pretended and represented that the treasury stock was being sold and that the proceeds would be used for development purposes, to sell the said worthless stocks individually owned by said defendants and each of them, and by the said International Development Company, so owned and controlled by said defendants and to divert the vast amount of property and a large amount of the money obtained from the sales of said stock to the use and benefit of the defendants and the said International Development Company, with the intent and purpose to defraud the said Walter J. Wood, and said divers other persons.

And the said defendants, on or about the twenty-first day of January, one thousand nine hundred and eleven, at and within the Division and district aforesaid, for the purpose of executing said scheme and artifice, and attempting so to do, knowingly, willfully and feloniously placed and caused to be placed, in the Post Office of the United States, at Spokane, Washington, for mailing and delivery, a certain letter then and there addressed and directed to Mr. Walter J. Wood, Waitsburg, Wash., as follows, to-wit:

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Jas. A. Williams, R. G. Belden, A. E. Wayland, President. Vice-President. Sec'y-Treas. Industrial Securities CAPITAL \$250,000 General Financing.

INTERNATIONAL DEVELOPMENT COMP'Y P.O. Box 714. 622-626 Peyton Blk. Phone Main 2142 Spokane, Wash., Jan. 21, '11

Mr. Walter J. Wood, Waitsburg, Wash. Dear Sir:-

In addition to the formal notices herewith enclosed, we wish to suggest that in your Trustees' Meeting you carry out as nearly as possible the general wishes of the stockholders in reference to your election of officers.

The stockholders have generally expressed themselves as wanting David Still to take position of president and general manager, Mr. S. Simard as vice president, C. A. Bryan, treasurer, and R. Covington, secretary. The By-Laws provide that it is not necessary for the secretary or treasurer to be amember of the Board.

The Minutes of the Stockholders' Meeting are not yet ready, but will be forwarded to you prior to your Directors' Meeting.

At the Stockholders' Meeting they passed a resolution instructing the Board of Trustees to use their discretion in settling the affairs with the International Development Company, as provided by a certain resolution passed by the Stockholders at the annual

meeting held last year. In considering this matter, we would suggest that your Board pass a resolution reading approximately as follows:

"WHEREAS, a resolution was adopted at the annual meeting of the stockholders of this company, held at the principal office of the company, 624 Peyton Block, Spokane, Wash., Jan. 19, '11, at 2:00 P. M., instructing the board to use its discretion in the matter of cleaning up accounts and adjusting other matters in regard to the sale of stock of this company delegated to the International Development Company by certain resolution of record passed at the annual meeting of the stockholders of this company held at the principal office of the company January 20th, 1910.

NOW, THEREFORE, be it resolved that we hereby instruct and authorize the treasurer to accept from the International Development Company promissory notes received by that company for treasury stock sold by the said International Development Co., and the treasurer is further authorized to give a receipt for such notes, AND be it further provided that such checking up and acceptance of notes by the treasurer shall relieve the International Development Co. of all obligations assumed by them under the said resolution passed at the Stockholders' Meeting, January 20th, 1910.

We would call your attention further to the fact that you want to pass a resolution authorizing the amount of stock to be sold, the price and commission to be paid. As by resolution passed at the Stockholders' meeting, you will see this was left in the hands of the Trustees.

As stated above, the minutes of the stockholders' meeting will be forwarded to you in ample time for you to study over the points recommended by them.

You will note from the minutes, members elected on the Advisory Board will have a right to attend the meetings of the regular Board of Trustees.

Yours very truly,

INTERNATIONAL DEVELOPMENT COMP'Y AFW|BH Per A. E. Wayland.

P.S. We hope you will be able to attend the meeting as it will be necessary to have a quorum in order to transact business as above outlined.

I. D. C.;

contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

# Third Count.

And the Grand Jurors aforesaid upon their oaths aforesaid, do further present:

That RUSSEL G. BELDEN and A. EUGENE WAYLAND, (hereinafter referred to as the defendants, and who are intended and referred to whenever the words defendants may hereafter appear in this indictment), on the third day of February, one thousand nine hundred and thirteen, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this Court, having thereto-

fore devised and intending to devise a scheme and artifice to defraud one John S. Vinson and divers other persons to the Grand Jurors unknown, being all such persons from whom said defendants could or might obtain money or property by means of said scheme and artifice and the divers false and fraudulent pretenses, representations and promises hereinafter set forth, and being all of such persons with whom said defendants might or could get into communication through the United States mail, which said scheme and artifice to defraud was to be effected by the use and misuse of the United States Post Office establishment, intending to incite and induce such persons so intended to be defrauded, by means of printed circulars, letters and reports distributed through the mail, deposited and caused to be deposited in the said United States mail, for mailing and delivery to such divers persons so intended to be defrauded, and by whatsoever other means as might occur to them as most practicable and feasible, to induce and incite the persons intended to be defrauded to open correspondence with them, the said defendants, and with the several corporations herein mentioned organized for the purpose of aiding in the execution of said scheme to defraud, which said scheme and artifice to defraud so devised, and intended to be devised, by said defendants, and each of them, was substantially as follows:

That said defendants would cause to be organized and incorporated a corporation to be known and styled the International Development Company, which was to be controlled, managed and directed by said defendants, and each of them, and that the purpose of said corporation, among other things, should, and would be, to act as the fiscal agent of certain other corporations, and other firms and companies thereafter to be incorporated and organized and controlled by said defendants as a part of said scheme to defraud and to more effectually aid in the execution of said scheme.

That it was a part of said scheme that said defendants would by themselves and through said International Development Company, and by other means under their control, procure, and cause to be procured and obtained, certain alleged coal claims having little or no value, situate in British Columbia, Dominion of Canada, and would cause to be organized and incorporated a corporation to be known as the Michel Coal Mines, Limited, with a capital stock of one million five hundred thousand shares of the par value of one dollar each, and that thereafter they would transfer to said Michel Coal Mines, Limited, the said claims, and that in consideration therefor, the said Michel Coal Mines, Limited, would issue to them individually and to the said International Development Company a large majority of the capital stock of the said corporation fully paid up;

And it was further a part of said scheme that said defendants would thereafter, in the manner aforesaid, procure, and cause to be procured and obtained, other claims adjoining the aforesaid claims, and would thereafter cause to be incorporated and organized another corporation to be known as the Crown Coal

and Coke Company, with a capital stock of two million shares of the par value of one dollar each, for the purpose of taking over said coal claims, which said claims would be transferred to said Crown Coal and Coke Company, and that in consideration therefor said Crown Coal and Coke Company would issue to said defendants and the International Development Company a large amount of the capital stock of said corporation as fully paid up stock;

And it was further a part of said scheme to defraud, that the said defendants would thereafter, in the manner aforesaid, procure, and cause to be procured and obtained, other claims adjoining the claims of the Crown Coal and Coke Company, and would thereafter cause to be incorporated and organized another corporation to be known as the Empire Coal and Coke Company, with a capital stock of one million five hundred thousand shares of the par value of one dollar each, for the purpose of taking over said coal claims, which said coal claims would be transferred by said defendants and said International Development Company to said Empire Coal and Coke Company in consideration of the transfer to said defendants and to said International Development Company of a large majority of the capital stock of said corporation fully paid up.

And it was further a part of said scheme that the defendants, in the manner aforesaid, would procure and cause to be procured, a charter for the construction and operation of a railroad ostensibly to furnish

transportation facilities for the product of the aforesaid alleged coal mines, and to be operated in connection therewith, and would thereafter cause to be incorporated and organized a corporation to be known as the Crows' Nest and Northern Railway Company, with a capital stock of twenty thousand shares of the par value of one hundred dollars each, for the purpose of taking over said charter, which said charter would be transferred to said Crows' Nest and Northern Railway Company in consideration of the transfer to the said defendants and to the International Development Company so under the control of said defendants, of a large amount of the capital stock of said corporation fully paid up.

And it was further a part of said scheme that the balance of the capital stock of each of the aforesaid corporations, to-wit: The capital stock of the Michel Coal Mines, Limited; the Crown Coal and Coke Company; the Empire Coal and Coke Company, and the Crows' Nest and Northern Railway Company, not so transferred to said defendants and to the International Development Company as aforesaid, should and would be and become the treasury stock of each of said corporations, respectively;

And it was further a part of said scheme to defraud so devised by the defendants that they should and would from time to time, dispose of and sell for money, property and notes, large amounts of the capital stock of the various corporations aforesaid, which had been transferred to themselves and to the International Development Company aforesaid;

And it was further a part of said scheme to defraud that by means of stock ownership in the aforesaid International Development Company and by other means under the control of said defendants, that said defendants would obtain and maintain management and control of said International Development Company; and by themselves, and through the said International Development Company ownership of stock and by other means under their control, and by manuipulation of the stocks, books and accounts of said various corporations, said defendants would obtain and maintain control of all of the aforesaid corporations, to-wit: The Michel Coal Mines, Limited; the Crown Coal and Coke Company; the Empire Coal and Coke Company, and the Crows' Nest and Northern Railway Company, with the intent and purpose to defraud the said divers persons;

And it was further a part of said fraudulent scheme as so devised by said defendants that, in their own names, and in the name of the said International Development Company, their, and its officers, agents, and employees, by means of letters, notices, reports, circulars, and prospectus sent and to be sent through the United States Post Office establishment; by oral representations and by whatsoever other means might occur to them as most practicable and feasible for the inducing of all persons who might or could be so induced to invest money and property in the purchase

of shares of the capital stock in the aforesaid various corporations, so controlled by said defendants, they, the said defendants, personally, and through their personal representatives, agents and employees, did represent, state and set forth that the stock of the said various companies so organized and controlled as aforesaid, was of great value, and would become of still greater value; and that the properties owned by the said various companies were of great value and would become of still greater value, as mining claims and for railroad purposes; whereas, in truth and in fact, as the defendants well knew, said properties had little or no value and none of said properties had any value as mining claims and for railroad purposes, except that the claims of the Crown Coal and Coke Company contained valuable deposits of coal, but the fact that the properties of the said Crown Coal and Coke Company did contain valuable deposits of coal was fraudulently used by said defendants and the International Development Company to more effectively sell the worthless stocks of the aforesaid various corporations so held individually by said defendants and the International Development Company, and did falsely and fraudulently represent and pretend that the Miche Coal Mines, Limited, had valuable coal property and that the properties of the Empire Coal and Coke Company contained numerous veins of coal of very high quality, all of which was false, as the defendants well knew at the time of making such representations; and did further falsely and fraudulently represent and pretend that the Crows' Nest and North-

ern Railway Company had acquired a right-of-way for the construction of a railroad from the properties of the aforesaid mining corporations to the line of the Canadian Pacific Railway Company in British Columbia, Canada, a distance of approximately fifteen miles, and would construct and operate said railroad in connection with said mines; and that the proceeds derived from the sale of stock of said corporations would be used to equip and develop said coal mines and build said railroad; and that the stocks of said corporations would greatly increase in value and said corporations would pay dividends; and that said defendants, so being in control of said various corporations did represent that they would manage the affairs of said corporations to the best interest of all the stockholders thereof; whereas, in truth and in fact, as the defendants well knew at the time of making such representations, and at all times in this indictment mentioned, that the Crows' Nest and Northern Railway Company had not acquired a right-of-way for its railroad as represented by them, and that the proceeds from the sales of said stock of said corporations would not, and were not, used to equip and develop the respective properties of said corporations or to build said railroad, but a large sum realized from the sale of said stock was diverted to the use and benefit of said defendants and the International Development Company, and that the stock of said corporations would not increase in value and said corporations would not pay dividends; and that the properties of said corporations would not be, and were not, managed and controlled

for the best interest of the stockholders; but would be, and were, managed and controlled for the sole benefit of said defendants, and each of them, and the International Development Company, with the intent and purpose to defraud the said divers persons.

And it was further a part of said scheme to represent to intending purchasers of the stock in the Empire Coal and Coke Company that with each five hundred dollar purchase of stock in said company, there would be given a share of stock in the Crows' Nest and Northern Railway Company, and that of the proceeds received by said Empire Coal and Coke Company on account of said five hundred dollar purchase of stock by said divers persons, one hundred dollars would be used by the Empire Coal and Coke Company in the purchase of one share of stock in the Crows' Nest and Northern Railway Company, and the one hundred dollars so expended by the Empire Coal and Coke Company would be placed in the treasury of the Crows' Nest and Northern Railway Company to be used in the construction of its railroad; whereas, in truth and in fact, as the defendants well knew at the time of making such representations that no part of the said one hundred dollars would be placed in the treasury of the Crows' Nest and Northern Railway Company and no part thereof would be used for the construction and development of said railroad, but would be, and was, appropriated to the use and benefit of the said defendants and the International Development Company.

And it was further a part of said scheme that said defendants, in the false and fraudulent manner aforesaid, would hold forth, represent and pretend to the divers persons intended to be deceived and defrauded thereby, that the stock of the said various corporations to be offered, and offered for sale would be the treasury stock of said various corporations, respectively, and that the money and property obtained from the sale of said stock would be used for the equipment and development of the properties of said corporations, respectively; whereas, in truth and in fact, as the defendants well knew at the time of making such representations, the stock of said various corporations offered and sold to divers persons was not the treasury stock of said corporations, but was, with few exceptions, the stocks held individually by said defendants and said International Development Company, so acquired as aforesaid, and the money and property obtained from such sales of stock was not placed in the treasury of said various corporations for development purposes, but a large amount of said money and all of the real property so obtained was appropriated by said defendants and the said International Development Company to their own use and benefit; it being the intent and purpose of said defendants so having obtained large amounts of stock having no commercial or marketable value, and so having falsely represented that the property of said various corporations was of great and immense value, and having so falsely pretended and represented that treasury stock was being sold and that the proceeds would be used for development purposes, to sell the worthless stocks individually owned by said defendants, and each of them, and by the said International Development Company, so owned and controlled by said defendants, and to divert the vast amount of property and a large amount of the money obtained from the sales of said stock to the use and benefit of the defendants and the said International Development Company with the intent and purpose to defraud the said John S. Vinson and said divers other persons.

And the said defendants, on or about the third day of February, one thousand nine hundred and thirteen, at an dwithin the Division and District aforesaid, for the purpose of executing said scheme and artifice, and attempting so to do, knowingly, willfully and feloniously placed, and caused to be placed, in the Post Office of the United States, at Spokane, Washington, for mailing and delivery a certain letter then and there addressed and directed to Mr. John S. Vinson, Freewater, Oregon, as follows, to-wit:

R. G. Belden, A. E. Wayland, R. Covington President. V. Prest & Treas. Secretary INTERNATIONAL DEVELOPMENT COMP'Y

(Incorporated)

Suite 624 Peyton Block Spokane Wash. February

Third 1913.

Mr. John S. Vinson,

Freewater, Oregon.

Dear Mr. Vinson:-

Received your enclosure of the 1st with a check

from Chas. Beckius for \$2.80 and check from Joel Howton for \$7.47, which are payments on voluntary assessments of one mill on the Empire.

I note what you say in regard to the matter, and as I am not posted as to just what disposition was to be made, I will turn the checks over to Miss Covington for her to check up with Mr. Wood, whom I find has also sent in this morning, some checks, but as I stated before, I am not familiar with what their plans were.

With kindest regards, I remain,

Yours very truly,

RGB|RC

R. G. BELDEN.

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

FRANCIS A. GARRECHT,
United States Attorney.

E. .J FARLEY,

Asst. United States Attorney.

[Endorsements]: Indictment. Presented to the Court by the Foreman of the Grand Jury, in open Court, in the presence of the Grand Jury and filed in the United States District Court. January 12th, 1914. W. H. Hare, Clerk.

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

UNITED STATES OF AMERICA,

Plaintiff, .

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

#### Bill of Particulars.

In compliance with the order of the court, the Government advises the above named defendants that the "other means under the control" of said defendants whereby they obtained and maintained management and control of the various corporations referred to in the indictment were:

By means of securing the election of the officers of said various corporations.

By directing and controlling the official action of said officers, and through them the corporate acts of the said various companies.

By having the Inland Surety Company, a co-partnership, controlled by said defendants, act as the fiscal agent for the Michel Coal Mines, Limited; and by having the International Development Company act as the fiscal agent for the Crown Coal & Coke Company, the Empire Coal & Coke Company, and the Michel Coal Mines, Limited. act as trustee for the Crow's Nest & Northern Railway Company, and by securing authority for the said International Development Company to vote the stock of the Crown Coal & Coke Company owned by the Crows' Nest & Northern Railroad Company, and by having the Crown Coal & Coke Company authorize defendant A. Eugene Wayland, to vote the stock of the Crows' Nest & Northern Railroad Company owned by it, at all meetings of the Crows' Nest & Northern Railroad Company.

By securing proxies to vote the stock of the said various corporations.

By organizing the British Columbia Investment Company, and by means of control thereof, control the Crown Coal & Coke Company.

Further, in compliance with the order of the Court, the Government advises the above named defendants that the manipulations of books and accounts of said various corporations referred to in said indictment were:

That the said defendants, by means of their control of said corporations as hereinabove pointed out, procured the passage of a resolution by the Crown Coal & Coke Company authorizing its manager, who was defendant Russell G. Belden, to incur and contract indebtedness upon its account in sums up to One Thousand Dollars (\$1,000.00) whereby said defendants were enabled to divert the money and credits of the said company to the Michel Coal Mines, Limited.

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That said defendants, by means of their control of said various corporations as hereinabove pointed out, caused to be intermingled the money and credits of the various corporations so as to give to said defendants a personal financial advantage, and thereby were enabled to turn over to said corporations divers and sundry notes obtained by them for the sale of their individual stock in said corporations, and which notes were of doubtful or no value, and by causing the Crown Coal & Coke Company to exchange, for a large number of said notes of little or no value held by said defendants, the notes of the corporation.

By causing the Crows' Nest & Northern Railroad Company to pass a resolution authorizing the defendants to sell the stock owned by said corporation in the Crown Coal & Coke Company for Fifty (50) cents per share net to said corporation, whereby said defendants were enabled and did dispose of said stock for seventy-five (75) cents and one dollar (\$1.00) per share; and by procuring the passage of a resolution by the said Crows' Nest & Northern Railroad Company authorizing the sale of other stock owned by it in the Crown Coal & Coke Company at seventy-five (75) cents per share net to said company, whereby said defendants were enabled to, and did, sell the same for One Dollar (\$1.00) per share.

Dated this 31st day of March, A. D. 1914.

(Signed) FRANCIS A. GARRECHT,

United States Attorney.

[Endorsements]: Bill of Particulars. Service of

the within Bill of Particulars admitted to have been made the 31st day of March, 1914.

(Signed) DANSON, WILLIAMS & DANSON, Attorneys for Defendants.

Filed March 31, 1914.

W. H. HARE, Clerk. By F. C. NASH, Deputy.

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSEL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

## Demurrer.

Comes now the defendant, Russell G. Belden, and demurs to the indictment herein filed against him, reserving, however, the right to plead over in the event this demurrer should be overruled, and for cause thereof says:

As to the first count:

1. That the matters and things alleged in said first count do not constitute any offense against the laws or sovereignty of the United States.

- 2. That said first count of the indictment does not allege any offense of which this court has jurisdiction.
- 3. That said first count of the indictment was not returned within three years of the commission of the alleged offense and is barred by the statute of limitations.
- 4. That there is a misjoinder of parties defendant in said first count.

#### As to the second count:

- 1. That the matters and things alleged in said second count do not constitute any offense against the laws or sovereignty of the United States.
- 2. That said second count of the indictment does not allege any offense of which this court has jurisdiction.
- 3. That said second count of the indictment was not returned within three years of the commission of the alleged offense and is barred by the statute of limitations.
- 4. That there is a misjoinder of parties defendant in said second count.

# As to the third count:

- 1. That the matters and things alleged in said third count do not constitute any offense against the laws or sovereignty of the United States.
  - 2. That said third count of the indictment does

not allege any offense of which this court has jurisdiction.

- 3. That said third count of the indictment was not returned within three years of the commission of the alleged offense and is barred by the statute of limitations.
- 4. That there is a misjoinder of parties defendant in said third count.

As to the said indictment as a whole the said defendant demurs thereto for the reason that there is a misjoinder of counts.

WHEREFORE said defendant prays judgment sustaining said demurrer and that this defendant be relieved from further pleading to said indictment or any count thereof.

DANSON, WILLIAMS & DANSON, Attorneys for said Defendant.

I, JAS. A. WILLIAMS, one of the attorneys for defendants, do hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

JAS. A. WILLIAMS.

STATE OF WASHINGTON, County of Spokane.

JAS. A. WILLIAMS, being first duly sworn, on oath says: That he is one of the attorneys for Russell G. Belden, one of the defendants in this action, and

that the foregoing demurrer is not interposed for delay.

JAS. A. WILLIAMS.

Subscribed and sworn to before me this 27 day of Feb. 1914.

[Seal] GEORGE D. LANTZ,

Notary Public for the State of Washington, residing at Spokane.

[Endorsements]: Demurrer. Filed in the U. S. District Court, Eastern Dist. of Washington, Mar. 27th, 1914. W. H. Hare, Clerk. Frank C. Nash, Deputy. Received a copy of the within Demurrer at Spokane, Wash., this 28th day of February, 1914. Francis A. Garrecht, Attorney for Plaintiff.

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

## Demurrer.

Comes now the defendant, A. Eugene Wayland, and demurs to the indictment herein filed against him, reserving, however, the right to plead over in the event this demurrer should be overruled, and for cause thereof says:

#### As to the first count:

- 1. That the matters and things alleged in said first count do not constitute any offense against the laws or sovereignty of the United States.
- 2. That said first count of the indictment does not allege any offense of which this court has jurisdiction.
- 3. That said first count of the indictment was not returned within three years of the commission of the alleged offense and is barred by the statute of limitations.
- 4. That there is a misjoinder of parties defendant in said first count.

## As to the second count:

- 1. That the matters and things alleged in said second count do not constitute any offense against the laws or sovereignty of the United States.
- 2. That said second count of the indictment does not allege any offense of which this court has jurisdiction.
- 3. That said second count of the indictment was not returned within three years of the commission of the alleged offense and is barred by the statute of limitations.
- 4. That there is a misjoinder of parties defendant in said second count.

As to the third count:

- 1. That the matters and things alleged in said third count do not constitute any offense against the laws or sovereignty of the United States.
- 2. That said third count of the indictment does not allege any offense of which this court has jurisdiction.
- 3. That said third count of the indictment was not returned within three years of the commission of the alleged offense and is barred by the statute of limitations.
- 4. That there is a misjoinder of parties defendant in said third count.

As to the said indictment as a whole the said defendant demurs thereto for the reason that there is a misjoinder of counts.

WHEREFORE said defendant prays judgment sustaining said demurrer and that this defendant be relieved from further pleading to said indictment or any count thereof.

DANSON, WILLIAMS & DANSON,
Attorneys for said Defendant.

I, JAS. A. WILLIAMS, one of the attorneys for defendants do hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law:

JAS. A. WILLIAMS.

# STATE OF WASHINGTON, COUNTY OF SPOKANE. (ss.

JAS. A. WILLIAMS, being first duly sworn, on oath says: That he is one of the attorneys for A. Eugene Wayland, one of the defendants in this action, and that the foregoing demurrer is not interposed for delay.

JAS. A. WILLIAMS.

Subscribed and sworn to before me this 27 day of Feb. 1914.

[Seal]

GEORGE D. LANTZ,

Notary Public for the State of Washington, residing at Spokane.

[Endorsements]: Demurrer. Filed in the U. S. District Court, Eastern Dist. of Washington, March 27th, 1914. Wm. H. Hare, Clerk, Frank C. Nash, Deputy. Received a copy of the within Demurrer at Spokane, Wash., this 28th day of February, 1914. Francis A. Garrecht, Attorney for Plaintiff.

AND AFTERWARDS, to-wit: on Thursday, March 26, 1914, the same being the 149th day of the regular September, 1913, Term of said Court, Present: Honorable FRANK H. RUDKIN, United States District Judge, Presiding, the following proceedings were had in said case, to-wit:

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

# Order Overruling Demurrer to Indictment.

Now, on this day, the demurrers of the above named defendants to the indictment herein returned against them by the Grand Jury duly impaneled herein, coming on regularly for hearing, the defendants being personally present in court and accompanied by their attorneys, James A. Williams and Fred Miller, and Francis A. Garrecht, United States Attorney, appearing on behalf of the plaintiff, and, after argument of counsel, the court being fully advised in the premises, it is ORDERED by the court that said demurrers, and each of them, to the said indictment, be, and the same are hereby overruled; to which ruling the defendants except and the exception is allowed.

District Court Journal No. 5 at page 60.

FRANK H. RUDKIN,

Judge.

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

# Motion for Separate Trial

Comes now the defendant Russell G. Belden and

moves the court that this defendant be accorded a trial separate from the defendant A. Eugene Wayland, for the reason that by a trial jointly the rights of this defendant cannot be conserved and protected and that evidence which may be introduced as against the said defendant A. Eugene Wayland and which would apply to him alone would tend seriously to prejudice this defendant on a trial of this cause.

This motion is made upon the records and upon the affidavit hereto attached and made a part hereof.

DANSON, WILLIAMS & DANSON, Attorneys for Defendants.

STATE OF WASHINGTON, county of Spokane.

RUSSELL G. BELDEN, being first duly sworn on oath says: That he is one of the defendants above named and makes this affidavit in support of this defendant's motion for separate trial; that this affiant cannot have a fair and impartial trial if both of the defendants are tried together; that much of the evidence which the Government proposes to introduce and the evidence that will be introduced will relate solely to the action and conduct of the defendant A. Eugene Wayland, and with which this affiant had nothing whatsoever to do; that the introduction of such evidence on the trial of this affiant would tend seriously to prejudice this defendant on his said trial and to prevent this affiant from having a fair trial; that through the trial of the defendants together, the

jury would be confused as to these defendants separately by being compelled to consider the evidence introduced and which would relate to the defendants separately and the jury could not segregate the evidence and apply that which bore only upon this defendant's act and conduct separate from the evidence relating to the acts and conduct of the other defendant.

RUSSELL G. BELDEN.

Subscribed and sworn to before me this 31st day of March, A. D. 1914.

[Seal]

JAS. A. WILLIAMS,

Notary Public in and for the State of Washington, residing at Spokane, Washington.

[Endorsements]: Motion. Filed in the U. S. District Court, Eastern District of Washington, April 20, 1914. Wm. H. Hare, Clerk. By Frank C. Nash, Deputy. Received a copy of the within Motion at Spokane, Wash., this 20th day of April, 1914. Francis A. Garrecht, Attorney for Plaintiff.

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

## Motion for Separate Trial.

Comes now the defendant A. Eugene Wayland and moves the court that this defendant be accorded a trial separate from the defendant Russell G. Belden, for the reason that by a trial jointly the rights of this defendant cannot be conserved and protected and that evidence which may be introduced as against the said defendant Russell G. Belden and which would apply to him alone would tend seriously to prejudice this defendant on a trial of this cause.

This motion is made upon the records and upon the affidavit hereto attached and made a part hereof.

DANSON, WILLIAMS & DANSON, Attorneys for Defendants.

STATE OF WASHINGTON, County of Spokane.

A. EUGENE WAYLAND, being first duly sworn on oath says: That he is one of the defendants above named and makes this affidavit in support of this defendant's motion for separate trial; that this affiant cannot have a fair and impartial trial if both of the defendants are tried together; that much of the evidence which the Government proposes to introduce and the evidence that will be introduced will relate solely to the action and conduct of the defendant Russell G. Belden, and with which this affiant had nothing whatsoever to do; that the introduction of such evidence on the trial of this affiant would tend seriously to prejudice this defendant on his said trial and to prevent this affiant from having a fair trial;

that through the trial of the defendants together, the jury would be confused as to these defendants separately by being compelled to consider the evidence introduced and which would relate to the defendants separately and the jury could not segregate the evidence and apply that which bore only upon this defendant's act and conduct separate from the evidence relating to the acts and conduct of the other defendant.

### A. EUGENE WAYLAND.

Subscribed and sworn to before me this 31st day of March, A. D. 1914.

[Seal]

JAS. A. WILLIAMS,

Notary Public in and for the State of Washington, residing at Spokane, Washington.

[Endorsements]: Motion. Filed in the U. S. Dist. Court Eastern Dist. of Washington, April 20, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy. Received a copy of the within Motion at Spokane, Wash., this 20th day of April, 1914. Francis A. Garrecht, Attorney for Plaintiff.

AND AFTERWARDS, to-wit: on the 21st day of April, 1914, the same being the 13th day of the regular April, 1914, term of said court, Present: Honorable FRANK H. RUDKIN, United States District Judge for the Eastern District of Washington, presiding, the following proceedings were had in said case, to-wit:

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

# Order Denying Motions for Separate Trials.

Now, at this day, the motions of the above named defendants for separate trials in the above entitled cause, coming on regularly for hearing, the defendants being present in court and accompanied by their counsel, James A. Williams and Fred Miller, urging said motions, and Francis A. Garrecht, United States District Attorney, appearing for the plaintinff, resisting said motions, and, after argument of counsel, the court being fully advised in the premises, it is ORDERED by the court that said motions, and each of them, be, and they are hereby, overruled; to which the defendants except and the exception is allowed.

(Signed) FRANK H. RUDKIN,

Judge.

District Court Law Journal No. 5 at page 98.

AND AFTERWARDS, to-wit: on Monday, February 16, 1914, the same being the 126th day of the regular September, 1913, term of said Court, Present: Honorable FRANK H. RUDKIN, United States District Judge, presiding, the following proceedings were had in said case, to-wit:

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

## Arraignment.

Now, on this day, in court appeared the above named defendants in their own proper persons and accompanied by their attorneys, James A. Williams and Fred Miller, for arraignment under the indictment heretofore returned against them by the Grand Jury duly impaneled herein; being interrogated by the court as to their true names the said defendants, and each of them, answered that they were the same as alleged in the indictment.

(Signed) FRANK H. RUDKIN, Judge.

District Court Law Journal No. 5 at page 41.

AND AFTERWARDS, to-wit: on the 21st day of April, 1914, the same being the 13th day of the regular April, 1914, term of said Court, Present: Honorable FRANK H. RUDKIN, United States District Judge, presiding, the following proceedings were had in said case, to-wit:

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

#### Pleas.

Now, at this day, into open court, come the above named defendants, in their own proper persons, and accompanied by their attorneys, James A. Williams and Fred Miller, for plea to the indictment heretofore returned against them by the Grand Jury duly impaneled herein; thereupon both defendants waived the reading of the indictment, and being interrogated by the court as to their pleas thereto, the said defendants, and each of them answered that they desired to enter their pleas of not guilty thereto, which pleas are received by the court and ordered entered of record on the minutes of the Court.

(Signed) FRANK H. RUDKIN, Judge.

District Court Law Journal No. 5 at page 98.

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

#### Verdict.

We, the jury in the above entitled cause, find The Defendant, Russell G. Belden, Guilty as to First Count; Guilty as to Second Count; and Not Guilty as to Third Count, of the Indictment.

Recommending Leniency.

H. L. BLACK, Foreman.

[Endorsements]: Verdict. Filed May 3rd, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy. Journal No. 5, p. 109.

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

#### Verdict.

We, the jury in the above entitled cause, find the Defendant, A. Eugene Wayland, Guilty as to First Count; Guilty as to Second Count; and Not Guilty as to Third Count, of the Indictment.

Recommending Leinency.

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H. L. BLACK,

Foreman.

[Endorsements]: Verdict. Filed May 3rd, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy. Journal No. 5, p. 109.

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES,

Plaintiff,

vs.

R. G. BELDEN and A. EUGENE WAYLAND,

Defendants.

#### Motion for New Trial.

Come now the above named defendants R. G. Belden and A. Eugene Wayland and each of them and each move the court to vacate and set aside the verdict of the jury returned herein on the 3rd day of May, 1914, and to grant them a new trial for the following reason, to-wit:

1. Newly discovered evidence material for each

of the defendants which they could not have discovered with reasonable diligence and produced at the trial.

- 2. Accident and surprise.
- 3. Error of law occurring at the trial and excepted to by each of the defendants.
- 4. That the jury received papers, documents and other evidence not allowed or submitted to them by the court.
- 5. That the verdict is contrary to the law and the evidence.
  - 6. Misconduct of the jury.
- 7. For the reason that the evidence is insufficient to sustain a verdict.

This motion is based upon the records and files in the above entitled cause, the instructions of the court and upon affidavits to be filed herein.

FRED MILLER,
DANSON, WILLIAMS & DANSON,
Attorneys for Defendants.

Service accepted. Copy received this 5th day of May, 1914. Francis A. Garrecht, U. S. Atty.

[Endorsement]: Motion for New Trial. Filed in the U. S. District Court, Eastern District of Washington, May 5th, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES,

Plaintiff,

VS.

R. G. BELDEN and A. EUGENE WAYLAND,

Defendants.

## Motion in Arrest of Judgment.

Come now the defendants R. G. Belden and A. Eugene Wayland and each of them and each move the court in arrest of judgment in the above entitled cause for the following reasons, to-wit:

- 1. That the facts stated in the first count of the indictment do not constitute a crime against the laws of the United States.
- 2. That the facts stated in the second count of the indictment do not constitute a crime against the laws of the United States.

FRED MILLER,
DANSON, WILLIAMS & DANSON,
Attorneys for Defendants.

Service Accepted. Copy received this 5th day of May, 1914.

FRANCIS A. GARRECHT,
United States Attorney.

[Endorsements]: Motion in Arrest of Judgment.

Filed in the U. S. District Court, Eastern District of Washington, May 5th, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

AND AFTERWARDS, to-wit: on Wednesday, June 17, 1914, the same being the 58th day of the regular April, 1914, term of said Court, Present: Honorable FRANK H. RUDKIN, United States District Judge for the Eastern District of Washington, presiding, the following proceedings were had in said case, to-wit:

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

# Order Denying Motion for New Trial and Order Denying Motion in Arrest of Judgment

Now, at this day, the motions of the above named defendants for a new trial herein and in arrest of judgment, both, coming on regularly for hearing, the defendants being personally in court and accompanied by their attorneys, James A. Williams, Esquire, and Fred Miller, Esquire, and Francis A. Garrecht, Esq., appearing as attorney for the plaintiff, and, after argument of counsel, the court being fully advised in the premises, it is ORDERED by the Court that both of said motions be, and they are hereby denied; to

which the defendants except and the exceptions are allowed.

(Signed) FRANK H. RUDKIN, Judge.

District Court Journal No. 5 at page 133.

In the District Court of the United States, Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

## Sentence of Defendent, A. Eugene Wayland.

Now, on this 19th day of June, 1914, into court, comes the above named defendant, A. Eugene Wayland in his own proper person, and accompanied by his attorneys, James A. Williams, Esquire, and Fred Miller, Esquire, for sentence, and being informed by the court of his conviction herein of record on the first and second counts of the indictment returned against him, he is asked by the court if he has any legal cause to show why the judgment of this court should not now be pronounced in his case; he nothing says, save as he before hath said.

WHEREFORE, it is now by the Court CONSID-ERED and ADJUDGED, that A. Eugene Wayland,

the said defendant now before the court, be imprisoned in the County Jail of Spokane County, Washington, or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States, for the period or Six (6) months, and that said defendant be committed to the custody of the Marshal of the United States for the Eastern District of Washington, who will carry this sentence into execution.

> (Signed) FRANK H. RUDKIN, Judge.

Register of Judgments No. 2, page 236.

In the District Court of the United States, Eastern District of Washington, Northern Division. No. 1881.

UNITED STATES OF AMERICA.

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

### Sentence of Defendant Russell G. Belden.

Now, on this 19th day of June, 1914, into court, comes the above named defendant, Russell G. Belden, in his own proper person, and accompanied by his attorneys, James A. Williams, Esquire, and Fred Miller, Esquire, for sentence, and being informed by the court of his conviction herein of record on the first and second counts of the indictment returned against him, he is asked by the court if he has any legal cause to show why the judgment of this court should not now be pronounced in his case; he nothing says, save as he before hath said.

WHEREFORE, it is now by the Court CONSID-ERED and ADJUDGED, that Russell G. Belden, the said defendant now before the court, be imprisoned in the United States Penitentiary on McNeal's Island, Washington, or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States, for the period of One Year and One Day, and that said defendant be committed to the custody of the Marshal of the United States for the Eastern District of Washington, who will carry this sentence into execution.

(Signed) FRANK H. RUDKIN, Judge.

Register of Judgments No. 2, page 236.

In the Ditsrict Court of the United States, for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES,

Plaintiff,

VS.

R. G. BELDEN and A. EUGENE WAYLAND,

# Order Extending Time to File Bill of Exceptions.

This matter coming on to be heard on the motion of the defendants for an order extending the time within which to file their Bill of Exceptions in the above entitled case sixty (60) days from the 19th day of June, 1914, and the court being fully advised in the premises.

IT IS ORDERED that the time within which to file a Bill of Exceptions may be and it is hereby extended sixty (60) days from the 19th of June, 1914.

Done in open court this 22nd day of June, A. D. 1914.

FRANK H. RUDKIN, Judge.

[Endorsements]: Order. Filed in the U. S. District Court, Eastern Dist. of Washington, June 22, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

In the District Court of the United States for the

Eastern District of Washington, Northern

Division

UNITED STATES,

Plaintiff,

VS.

R. G. BELDEN and A. EUGENE WAYLAND,

## Order Extending Time to File Bill of Exceptions.

This matter coming on to be heard on the motion of the defendants for an order extending the time within which to docket the above entitled cause, and file the record thereof in the Circuit Court of Appeals, Ninth Circuit, sixty days (60) in addition to the time allowed by law, and the Court being fully advised in the premises.

IT IS CONSIDERED, ORDERED and AD-JUDGED by the court that the defendants be, and they are hereby granted sixty (60) days in addition to the time allowed by law in which to docket the above entitled cause, and file the record thereof in the Circuit Court of Appeals, Ninth Circuit.

Done in open court this 22nd day of June, A. D. 1914. FRANK H. RUDKIN,

Judge.

[Endorsements]: Order. Filed in the U. S. District Court, Eastern Dist. of Washington, June 25, 1914. W. H. Hare, Clerk. Frank C. Nash, Deputy.

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

# Order Extending Time to File Bill of Exceptions.

This matter coming on to be heard on motion of defendants for an order extending the time within which to file their Bill of Exceptions in the above entitled cause, twenty (20) days from the nineteenth (19th) day of August, 1914, and the Court being fully advised in the premises;

IT IS ORDERED, that the time within which to file a Bill of Exceptions be and is hereby extended twenty (20) days from and after the nineteenth day of August, 1914.

Dated this 17 day of August, A. D. 1914.

FRANK H. RUDKIN,

Judge.

[Endorsements]: Order. Filed in the U. S. District Court, Eastern Dist. of Washington, August 20th, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

# Order Extending Time to File Bill of Exceptions.

Upon the application of defendants the time of the defendants for preparing, filing and serving a Bill of

Exceptions in the above entitled cause is extended for a period of thirty (30) days from and after the decision upon the defendants' motion for a new trial.

Done in open court this 8 day of May, 1914.
FRANK H. RUDKIN,
Judge.

[Endorsements]: Order Extending Time for Preparing, Filing and Serving Defendants' Bill of Exceptions. Filed in the U. S. District Court, Eastern Dist. of Washington, May 14, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

#### BEFORE:

HON. F. H. RUDKIN, Judge Presiding and a Jury.

APPEARANCES:

For the Plaintiff:

F. A. GARRECHT, ESQ.

For the Defendants:

MESSRS. DANSON, WILLIAMS & DANSON.

MESSRS. ROBERTSON & MILLER.

## Bill of Exceptions.

BE IT REMEMBERED, that the above entitled cause came on regularly for hearing in the above entitled court, on March 21st, 1914, at 10:00 o'clock A. M., before the Hon. F. H. Rudkin, Judge Presiding; the plaintiff being represented by its attorney, F. A. Garrecht, Esq., and the defendants appearing in person and by their attorneys, Messrs. Danson, Williams & Danson, and Messrs. Robertson & Miller.

WHEREUPON the following proceedings were had and done, to-wit:

MR. WILLIAMS.—We have interposed a motion on behalf of each of the defendants separately, by affidavits, for separate trials. I apprehend in the trial of this case, if these two defendants would be tried together there would be many complicated questions arise. I also apprehend that the evidence as it goes along could not under any circumstances apply to both of the defendants, and it seems to me this is the time when it should be passed upon. And it seems to me, your honor is bound to say before the case is through that it will be necessary, absolutely necessary, that these cases should be separated and separately tried, and we have made our application for a separate trial by affidavits, showing all of these facts.

THE COURT.—If it were true that the testimony would be offered against one of these defendants which is not competent or material against the other, there would be strong support for your motion, al-

though it is addressed to the discretion of the court. But the government is evidently proceeding upon the theory that each of these co-defendants aided and abetted the other, or that there was a conspiracy between them. On that view of the case, any testimony competent against one would be competent against the other whether they were tried together or tried separately.

MR. WILLIAMS.—Assuming, of course, that it was shown that the other was concerned in that evidence.

THE COURT.—Both cases would have to go to the jury and cannot be determined by the court, so the testimony must necessarily come in. Have the dedefendants pled?

MR. WILLIAMS.—They have not.

THE COURT.—What say you to the indictment in this case, guilty or not guilty?

BOTH DEFENDANTS.-Not guilty.

WHEREUPON a jury was duly empaneled and sworn to try the case and thereafter Mr. Garrecht made an opening statement on behalf of the Government, thereafter the Government introduced the following testimony:

J. H. HEMPHILL, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

My name is J. H. Hemphill, and I live in Spokane and have lived here for twelve years. I was not one

of the members or incorporators of the Belden company, but I was one of the incorporators of the International Development Company, the other owners being Mr. Belden and Mr. Wayland.

A certified copy of the articles of incorporation of the Belden Company, admitted without objection as Plaintiff's Exhibit "1".

Q.—Mr. Hemphill, you were a member of the International Development Company, I believe you said?

A.—Yes, and the other two members were Belden and Wayland, the defendants.

After this time the International Development Company became the owners of four claims north of Crows Nest.

I don't remember exactly what they paid for them, but I think the statement which you made to the jury was approximately correct.

MR. GARRECHT.—Now, we want to offer in evidence page 10 of the minute book.

MR. WILLIAMS.—We make the objection this is incompetent, irrelevant and immaterial and not within any of the issues of the case and particularly make the objection on behalf of the defendant Wayland, for the reason that it does not relate to the defendant Wayland at all and has no connection with that defendant.

THE COURT.—The objection will be sustained

as to the defendant Wayland unless he is subsequently connected with it, and the jury will only regard it in so far as the parties are connected with it.

The exhibit admitted in evidence and marked Plaintiff's Exhibit "2," and read to the jury.

(Witness temporarily excused.)

MISS RETHA COVINGTON, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

I live in Spokane and am a member of the International Development Company. I was not secretary of that company during the year 1911. The stockholders of the company were Mr. Belden and Mr. Wayland and Mr. Williams. The books of the corporation were kept in the office of the corporation. The books of the Empire Coal & Coke Company, the books of the Crown Coal & Coke Company, the books of the International Development Company, and the books of the Empire were kept in the same office, as well as the books of the Michel, as also were the books of the Crows Nest & Northern Railway Company kept in the office. All of these corporations had their place of business or headquarters in the office of the International Development Company; that is, that was their head office. These were also the offices of Mr. Belden and Mr. Wayland. At times Mr. Belden and Mr. Wayland had something to do with managing, controlling, and directing the affairs of these various companies in the office.

On cross-examination Miss Covington testified as follows:

In regard to these offices of these various mining companies and the offices of Belden and Wayland they were segregated in a way. The Crown had their office there and paid their rent and so forth, just the same as though they had a separate office. They paid rent for their share of the office. If I remember correctly the Michel and Empire paid so much a month for the use of the offices. At one time the Crown Company rented the office and paid the bills. Williams who owned the stock in the International Development Company in 1911 was no more than a formal stockholder, just to qualify as a trustee. The books of these different companies, the Empire and the Crown, and the Michel, were under the control of their board of trustees, as near as it could be. Neither Mr. Belden nor Mr. Wayland exercised any control over these books other than any other trustee or stockholder of these companies. At different times I have been an officer of the Empire and the Crown and the Michel, but never of the railroad company. I was not under salary from them. In performing my work for these companies I did so as a matter of accommodation.

On redirect examination by Mr. Garrecht Miss Covington testified that she was not under salary from these other companies but had always been paid by the International Development Company.

(Witness excused.)

J. H. HEMPHILL, resumed the stand for further direct examination by Mr. Garrecht and testified as follows:

The articles of incorporation of the International Development Company were admitted without objection as PLAINTIFF'S EXHIBIT "3".

MR. GARRECHT.—We want to offer the articles of incorporation of the Michel?

MR. WILLIAMS.—To which offer we object as incompetent, irrelevant, and immaterial, and particularly in so far as the defendant Wayland is concerned, that he was not a party at all to the incorporation.

THE COURT.—The record will be admitted and the effect upon each of the defendants will be determined in the course of the trial, by the charge of the court.

The articles of incorporation of the Michel Company admitted in evidence and marked PLAINT-IFF'S EXHIBIT "4".

MR. GARRECHT.—The Government wishes to show by the articles of incorporation of the Michel Coal Mines, Limited, that this company was organized on the 18th of November, A. D. 1905, the incorporators being J. T. Penn, J. H. Hemphill, and R. G. Belden, organized for a capital stock of \$1,500,000.00 divided into 1,500,000 shares.

THE COURT.—It will be admitted for that purpose.

Plaintiff's Exhibits "5" & "6" admitted without objection, and the witness testified that the descriptions therein were those of the two claims offered by the International Development Company to the Michel Company.

The witness further testified that he was a member of the Inland Surety Company, and that he thought that the company was authorized to sell the stock of the Michel Coal Mines.

MR. GARRECHT.—I offer in evidence the partnership agreement of the Inland Surety Company.

MR. WILLIAMS.—We object to it as incompetent, irrelevant, and immaterial and not within any issues in this case and for the further reason that the document offered does not refer to any fact in the indictment and for the further reason it appears from the document offered that it is terminated, the partnership was dissolved on the 6th day of March, 1906, and the statute of limitations has run against anything connected with the Inland Surety Company, and that all matters connected with the Inland Surety Company were ended and determined at that time; and I make the further objection, so far as the defendant Wayland is concerned, for the reason that by the document itself, it appears that Mr. Wayland was not a party in any sense to that concern.

THE COURT.—It will be admitted as against the parties to it.

The defendants except and exception allowed.

The articles of copartnership admitted and marked PLAINTIFF'S EXHIBIT "7".

MR. GARRECHT.—We offer this in evidence.

MR. WILLIAMS.—To which we object as incompetent, irrelevant and immaterial and being between parties not involved in this litigation and referring to a matter in which the defendant Wayland is not in any manner interested, and on whose part we make a special objection; and for the further reason that it is not within any of the issues contained in the indictment, or allegation on which the government is basing this claim; and further and particularly as to the letter appearing on the same page, a letter written by Mr. S. W. O'Brien to Mr. J. H. Hemphill, for the same reason and for the further reason it is between other parties than these defendants.

THE COURT.—Is that letter made a part of the minutes in any way?

MR. GARRECHT.—It is, by the acceptance of the Michel Company.

THE COURT.—It will be admitted subject to the charge of the court as to the effect against the parties.

The document admitted in evidence and marked PLAINTIFF'S EXHIBITS "8" & "9".

The witness testified that at the time the agreement in question was made Mr. Belden, Mr. Wayland, and himself were the owners of all the stock of the International Development Company. MR. WILLIAMS.—Do you offer the prospectus

MR. GARRECHT.—Yes, that is a part of the letter.

MR. GARRECHT.—I wish to offer in evidence a letter dated Spokane, Washington, December 28th, 1905, written on the letterhead of the Inland Surety Company, Fiscal Agent, addressed to J. P. Hoag, Gilbert, Idaho, signed Inland Surety Company, per Wayland.

The witness testified that he could not say definitely whether he wrote the letter or not, but he signed Mr. Wayland's name to it, but that it was not his general custom to sign Wayland's name to letters. He further testified as follows:

I do not know that Mr. Wayland knew that I signed his name to this letter. I was a member of the Inland Surety Company at that time but Mr. Wayland was not. Perhaps he had an interest in it later on, in a round about way. He was not a member of the partnership at that time. He was, however, interested in the International Development Company, in which himself, Mr. Belden and I each held a third interest. The office of the company at that time was in the Peyton Building, that is both the International Development Company and the Inland Surety Company.

MR. GARRECHT.—Q. The partnership agreement that you had to sell the stock of the Michel, that was entered into on or about the 4th or 5th of December, 1905?

- A.—December 5th, 1905.
- Q.—I will ask you if that is a correct copy of that agreement that was entered into?
- A.—Why, I presume it was; it was apparently the date in the document itself.
- Q.—Now, at that time was there any agreement between the Inland Surety Company and the International Development Company by which they were to share in the profits derived from this sale?
- A.—I don't think there was any evidence of any interest.
- MR. GARRECHT.—Q. Who did the commission go to, who got it?
- A.—Well, I don't think there was any profit left from these commissions; I don't think there was anything to go to anybody on that.
- Q.—Then you haven't any recollection how you came to sign Mr. Wayland's name to that letter?
- A.—I have no positive recollection, Mr. Garrecht, no sir.

The letter referred to marked PLAINTIFF'S EXHIBIT "10" for identification.

- Q.—You mailed that letter out, did you; it went out through the mails?
- A.—I signed the letter for mailing, I don't know as I mailed it.

In reference to a letter marked Plaintiff's Exhibit

"11" for identification the witness testified that he wrote the letter but could not state positively that it was written with the knowledge of Mr. Belden, but he thought every one in the office knew about it, and that Mr. Belden and Mr. Wayland were connected with the office.

I think I had a talk with Mr. Belden and Mr. Wayland about the Michel Coal Mines company purchasing these two additional claims that were staked in the name of E. A. Martin and E. H. LaFrance. I think the understanding that we arrived at among ourselves about any others we were to make the Michel Company as outlined in that letter. I think that was the conclusion, but I would not say absolutely. that this letter was written as a result of the conversation and conclusion reached by myself, Mr. Belden and Mr. Wayland with reference to these claims. There may not have been both of these present, or they may both have been there. I don't know. I don't remember whether I talked it over with each of the others separately. I do not remember positively of talking it over with either one of them, but I am quite positive I would not have sent out a letter of that kind without having done so, because it is quite an important letter, and I don't think I would have taken action without consulting my partners on it.

MR. GARRECHT.—Q. Did you ever send out a letter of such an important nature without first having had the consent of the parties interested?

A.—I don't think so.

MR. GARRECHT.—Q. I will ask you if you would have sent out such a letter as this without having consulted all the parties in interest.

A.—Yes, I might have sent out the letter without consulting both parties. It was a stock company and I would feel justified if two of the partners or two of the holders of an equal amount of stock would sanction it. (Noon recess.)

Page 11 of the Michel Coal Mines Limited minute book admitted in evidence without objection and not marked as an exhibit, but read into the record.

MR. GARRECHT.—I wish to offer in evidence from page 20 of the minute book of the Michel Coal Mines Limited here, a special meeting, May 15th, 1906.

(Exhibit "12" admitted.)

MR. GARRECHT.—This is one that has been read. I will ask the stenographer to mark this.

MR. WILLIAMS.—Yes.

PLAINTIFF'S EXHIBIT "13" marked by the stenographer.

PLAINTIFF'S EXHIBIT "14" admitted without objection.

I believe the Michel Coal Mines paid the \$2,500.00 for these claims.

The International Development Company afterwards became the fiscal agent for the Michel Company.

(Page 37 of the Michel Coal Mines, Limited, minute book, admitted in evidence and marked PLAINTIFF'S EXHIBIT "15".

(Exhibits 16 to 22 inclusive were identified by the witness.)

(Witness excused.)

S. W. O'BRIEN, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht, as follows:

My name is S. W. O'Brien, and I live in Spokane and have lived here since 1899. I think in the early part of December, 1909, I was a member of the Inland Surety Company, and after refreshing my memory from plaintiff's exhibit "7", I recognize my signature to the document and I have had it in my possession since December, 1909. I am sure that this pamphlet, a prospectus of the Michel Coal Mines, Limited, was turned out by a printing shop of which I was the proprietor during the time I was a member of this partnership. I came to print it because I was given the copy. The copy was given to me from an office in the Peyton Block which was occupied by Mr. Hemphill, Mr. Belden and Mr. Wayland. After that time I had the copy set and printed it in that form, printed it in my establishment. I caused the booklet to be delivered. During the time I was a member of the Inland Surety Company I was in the offices in the Peyton Building occupied by Messrs. Belden and Wayland quite a few times, mostly in connection with orders of printing of this nature. I

think the Inland Surety Company's business office was also in their office, in that building. I think after these were printed I saw some of the copies there in their office.

THE COURT.—The question is whether you have any recollection of the case or not?

A.—The order—the usual routine of the printing order was to receive the copy, perform the work and make a charge against a certain party, and I always expected to find them in the same place when I went after my money, and presumably the boy had delivered the goods in this case. The order was received from that office and the charge was made against that office, and I never heard any "kick" that they hadn't got the goods.

I have no distinct personal recollection of seeing a copy of this prospectus in that office that I can remember. I had no business seeing it there.

MR. GARRECHT.—Q. Who paid you for printing it?

A.—The printing of these prospectuses was a part of my consideration of the partnership in the Inland Surety Company, I was to supply certain printing.

Q.—You were a member of the Inland Surety Company about three months?

A.-Yes, sir.

Q.—Now, at the time of the dissolution was anything given to you in consideration for the printing

that you had done, upon the dissolution of the company?

A. Not for the printing. I wasn't paid for printing; I received some money, but not for printing.

Q.—Well, what did you get the money for?

A.—The money was given to me in consideration of my turning back some stock which had been given me at the time I became a member of the Inland Surety Company.

Q.—And who paid you for the stock?

A.—The stock, as I understand it, was given to me as a bonus.

MR. WILLIAMS.—Isn't there a writing covering that stock so we won't have to guess at it?

MR. GARRECHT.—Not that I know of. I offer at this time in evidence the articles of agreement and contract between the International Development Company and S. W. O'Brien.

MR. WILLIAMS.—I object to it as not being material.

THE COURT.—It will be admitted.

Defendants except and exception allowed.

Plaintiff's Exhibit "23" admitted.

PLAINTIFF'S EXHIBIT "24" for identification marked by the reporter.

MR. GARRECHT.-Q. I now hand you plaint-

iff's exhibit for identification No. 24 and ask you if you had this printed?

A.—Well, nine years is a long time. I have seen this before and it is the work of my shop, in all probability. There is no identification mark on this slip of paper by which any one could identify who printed it. I printed in my place similar slips of paper, and these were printed in my shop; whether this is one of the number or not I will not swear, I could duplicate this now by photographic process. I printed slips similar to this during the life of my connection with the Inland Surety Company.

MR. GARRECHT.—Q. Well, was it in pursuance to your contract with the Inland Surety Company?

A.—Yes sir; similar slips of paper to these were printed, and they were printed as a part of my agreement to furnish printing for the Inland Surety Company.

On cross-examination the witness testified as follows: The copy from which this was printed was not brought to my office and I do not have any personal recollection of the individual from whom I got it.

On redirect examination he testified as follows: I know that I got it from the office of the Inland Surety Company.

(Witness excused.)

J. S. HOGUE, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

My name is J. S. Hogue, and I live at Orofino. I purchased stock in the Michel Coal Mines, Limited, but I do not quite remmbeer how I first heard about the company, whether I received a letter or whether I read in some paper about it. I don't remember just how I got the first information.

I haven't any recollection about it, independent of the letter. I remember having received that letter and others. I cannot say as to this prospectus having been attached to the letter at the time I received it. I remember receiving it and reading it about that time. It has been quite a number of years ago. I received it through the mail.

Q.—Both the letter and prospectus were attached together?

A.—I don't remember about that being attached but I received a prospectus and that letter by mail. After the receipt of this letter I attended a meeting of the Michel Coal Company. I think both of the defendants were present, if I remember right. I am quite sure Mr. Belden was. They spoke to me about the Michel property and if I remember I asked them about the proposition the condition of things there. This was after I made my investment.

I cannot say positively whether both the defendants were present, but I think they were. I had the talk

with Mr. Belden. The time of this meeting was about the 1st of June but I don't remember what year. I can't say for sure whether it was after the receipt of the letter but it was after I had purchased, and perhaps the first stockholders' meeting. I kept no dates or anything of that kind, and I wouldn't be positive what year it was, but it was in June, the first of June, that I was present at a stockholders' meeting. I asked him about the proposition and he informed me that it was a good proposition and thought it would be a paying proposition and would like me to take another block of stock, something to that effect if I remember—as near as I remember it, was the course of our conversation.

I think he saidthe property was undeveloped but they were preparing to start out a crew of men pretty soon, something of that kind, to develop it, prospect it. He told me they had discovered coal on the property and showed me some of it either at that time or a time near that date, when I passed through the city, I called and got a piece of coal, and he told me that they came from the Michel Coal mine, took a small piece, perhaps the size of a hen's egg or smaller. He said something about the railroad, but I don't remember what the conversation was exactly, or whether that was in a letter that he wrote me; I am not sure which it was now, either a letter or-I was assured-I am not sure it was in a conversation. I talked with him later than that but I don't remember who was present if anybody. It was a time that I pased through the city going east, and I came to his office and had a talk

with him. I was talking with Mr. Belden at that time and he gave me some literature concerning the survey of the country, the Crows Nest country, and then told me about the railroad, prospective railroad, and gave me a piece of coal. I think that all happened at the same time, at the time I passed through the city. He said in relation to the Michel that he thought it would be a good thing or was a good thing, or was going to be a good thing; something to that effect.

MR. GARRECHT.—I now show you a letter written on the stationery of the Inland Surety Company dated Spokane, Washington, December 18th, 1905, addressed, Mr. J. S. Hogue, Gilbert, Idaho. Did you receive that letter?

A.—Yes sir.

Q.—Through the mail?

A.—Yes sir.

WHEREUPON an adjournment was taken until 10:00 o'clock A. M., March 23rd, 1914.

MISS RETHA COVINGTON, recalled, on direct examination by Mr. Garrecht, testified as follows:

MR. GARRECHT.—We want to offer in evidence the books of the International Development Company that were identified by Mr. Hemphill, all of them.

MR. WILLIAMS.—Well, of course, we object to the offer in bulk, these books, anything material should be offered separately.

THE COURT.—The books are admissible in evi-

dence. How much of them have any bearing on this case I cannot tell at this time. I presume the government will hereafter direct specific attention to the part that they desire to offer.

MR. WILLIAMS.—Of course, going in under an offer like this, it seems that the whole thing is before the jury and we object to it.

THE COURT.—I presume the particular parts that the government relies upon will be designated, and there is no reason why the other part should be received in evidence. I will see that nothing improper goes before the jury and when they retire we can segregate the matters, if it becomes necessary to make up a record in the case.

Defendants except and exception allowed.

THE COURT.—They will be admitted subject to the designation of the plaintiff; they may go before the jury.

MR. WILLIAMS.—And I assume that the admission of these books at this time in that way implies a ruling of your honor upon any material matter that may be there?

THE COURT.—No, you can object to any particular part of them as we go along.

EXHIBITS 17, 18, 19, 20, 21 & 22 admitted in evidence.

I stated yesterday that I was secretary for the International Development Company, and as such I

have charge of their correspondence, and I was also the stenographer in the office. As to the letters that were sent out, sometimes they were dictated and sometimes I wrote them of my own accord. The only way of distinguishing between those that were dictated and those that I wrote myself is the fact that sometimes I put my initials down in the corner and sometimes I didn't. My practice when they were dictated to me, was to always use my initials, and I did not use any other initials except my own. Of late years I have used the initials of the persons who dictated the letter to me, but when I was first in the office they did not follow that custom. However, later on they did. Then they used the initials of the person writing the letter and the stenographer. Copies of the letters that were written and sent out were made and kept in the files of the company. The package of files you now hand me is the package I handed to you the other day in the hall. I got this package of letters out of the files of the companies. The letter which you now show me, dated February 26th, 1906, was kept among the files of the company.

EXHIBITS 26, 27, 28, 29, 30, & 31, marked for identification.

(The correspondence making up exhibit 32 for identification was identified by the witness.)

(Pamphlets similar to this pamphlet marked 'aintiff's exhibit 31 were sent out of the office of Messrs. Belden & Wayland.)

- MR. GARRECHT.—Q. Miss Covington did you ever mail any of these pamphlets out?
  - A.—I don't remember. I hardly think I did.
- Q.—Were you bookkeeper for any of these companies at any time prior to January of this year?
  - A.—No sir.
  - Q.—Never made any entries on the books?
- A.—Well, I might, yes, sir. I did work a little on the books of the International Development Company from March of 1912.
- Q.—Were the books of the other corporations kept in the office here in Spokane?
  - A.—In their offices?
  - Q.—Yes, in their offices?
  - A.—What company are you referring to?
- Q.—Well, the International Development Company?
- A. Well, they had their own offices. It was all in one suite however. They kept within their own office, each company was there in the office, as well as the office of the International Development Company.
  - Q.—But they were all there in one room?
  - A.—One suite.
- Q.—Were you ever an officer in any of these corporations, assistant secretary?

A.—Yes sir. I identify this book as the ledger of the International Development Company and as one of the books having been kept in the office.

MR. GARRECHT.--I now offer the book in evidence.

MR. MILLER.—That is I presume the offer will be under the same arrangement as the others?

THE COURT.—Yes. Of course there may be something in there that is competent and something that is not. We will pass upon that.

# PLAINTIFF'S EXHIBIT "33" admitted.

Upon admission of counsel various books of record were admitted in evidence and marked PLAINT-IFF'S EXHIBITS "34" to "68" inclusive, the admission in all cases being that they were the books and records as shown upon their face to be.

- MR. GARRECHT.—Q. Miss Covington, you stated that in later years you used the initials of the person who dictated the letter to you besides your own on your letters. What was the method prevailing before that time, by you?
- A. Why, it seemed when they first started in business they were using the initials of the company, whatever it happened to be, with the stenographer's initials.
- Q.—I show you a letter which is marked for identification "29" and ask you to state to the jury

what the letters indicate on the lower left hand corner here. Give them all first and then what they indicate?

A.—I. S. C. and R. C., "Inland Surety Company" and my initials, "Retha Covington."

On cross examination by Mr. Williams, the witness testified as follows:

I have no method of identifying these papers which I say came from the office of the International Development Company, except that I took them from the files myself. I took them out at the time the grand jury met but I don't remember the date. Previous to that time these files had not been taken from the office by Mr. House, the government inspector. These were not part of the papers he took out under receipt, but it is a fact that Mr. House for eight or nine months had the privileges of that office, going through the files and certain letters and documents were taken out by him. These files which I say I took down to the grand jury were returned to the files of the International Development Company about a month ago. I called Mr. House up and asked him for them. I couldn't state the exact date however. As to these documents here which I have referred to that I took down in January, I have no knowledge as to all of them having been taken down by me at that time. There are, however, some of them that I can remember.

MR. WILLIAMS.—Q. For instance, take identification number 25. What I want to get at is this: have you any independent recollection as to all of

these documents being attached and being a part that you turned over in January?

A.—I have not. These were taken out in bulk and I couldn't identify any of them separately.

I did not check them at the time they were taken nor did I retain copies of them at that time. I was called before the grand jury that morning and asked to bring them down and I had no chance to make copies.

MR. WILLIAMS.—What I am getting at is this, and that is all: You don't undertake to say that you have any independent recollection of all of these documents?

A.—I have not.

Q.—But you do know that you delivered into the government's possession certain files?

A.—Yes, sir.

Q.—And later Mr. House returned you some files that were claimed to be the ones that you had turned over to him?

A.—Yes, sir.

(Witness excused.)

F. L. FERRELL, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

My name is F. L. Ferrell and I live in Milwaukee, Wisconsin, and have lived there for thirteen years.

I am engaged in the grain business. I am acquainted with the signature of the letter which you hand me, and it is the signature of A. E. Wayland. I received that letter through the mails.

MR. GARRECHT.—I now offer the letter in evidence.

MR. WILLIAMS.—I object to it as immaterial.

THE COURT.—Objection overruled.

Defendants except and exception allowed.

PLAINTIFF'S EXHIBIT "69" admitted.

MR. GARRECHT.—That is all.

#### CROSS EXAMINATION.

On request of counsel for the defendant, a letter from the witness admitted in evidence and marked DEFENDANT'S EXHIBIT "70".

MR. GARRECHT.—You admit that that was sent through the mails, do you?

MR. WILLIAMS.—I don't know anything about it but I admit that is Mr. Wayland's answer.

(Witness excused.)

J. S. HOGUE, recalled, testified on direct examination by Mr. Garrecht as follows:

PLAINTIFF'S EXHIBIT "71" identified by the witness and admitted without objection in evidence.

## CROSS EXAMINATION.

On cross examination by Mr. Williams, he testified as follows:

My business at present is real estate and fire insurance. Sometime after the year 1905 I talked with Mr. Belden concerning these properties, particularly the Michel. Mr. Belden stated that he thought it was good property and he told me it was the intention of the company to put a crew of men to work prospecting the property to ascertain the possibilities of the claims. In the Michel Coal Mines Limited I may have been an officer later on, but I don't remember, but I was present at one meeting of the stockholders and it was either at that meeting or at a later time when I pasesd through the city that I heard Mr. Belden say something about the properties. I don't remember which time it was. He said that there had been some coal found. I think that was the later time, the time I passed through the city going East. I could not give the exact date but I think it was on my way to St. Louis to the Exposition. I am not sure. The time I attended the meeting was in January. At that meeting certain reports were read concerning this property.

MR. WILLIAMS.—Q. Now, look a minute and see if you recognize that—I direct your attention now to the minutes of that meeting showing your presence and reference there to certain letters read and that certain letters, right here under the same date, January 21st, 1907—look at that letter, the

one of January 21st, 1907, and state if you recall that being the letter read?

A.—Well, I remember that there was something, a letter of that nature read, but I could not state as to that being the identical letter. There were reports made, and made favorable. I do not recall whether a report was submitted by the secretary. I do however remember a letter bearing date of January 12th, 1907, having been read, being a letter from Mr. Hemphill. While I cannot recall distinctly in regard to the letter of January 21st, 1907, having been read, I rather think it was either read or something, I can't remember—but I remember something. Mr. Belden may have told me these things. I don't remember; but I remember this one.

DEFENDANT'S EXHIBIT "72" for identification marked by the stenographer. DEFENDANTS' EXHIBITS "72" and "73" admitted in evidence without objection.

MR. WILLIAMS.—Q. Now, Mr. Hogue, having your attention refreshed by this letter what would you say as to the contents of this letter being substantially what you were told?

A.—I think that I remember and if I recollect, I heard that letter read or most of it at least. I remember the part of the letter that refers to the office, and also I remember about the horses and the preparation for work; I remember that.

- Q.—And what would you say now as to that being a statement of what you heard at that meeting?
- A.—That is where I got it instead of from the individual but I can't remember quite whether I received it verbally or whether I heard the report read.
- Q.—Now, having your recollection refreshed, I believe you state you were not told this by Mr. Belden but that you got it from reading this letter?
- A.—Yes, unless he repeated it at my second coming. We had a personal talk; that I remember.

I had some property listed now and I have sold real estate on a commission basis at Orofino. I was requested by either Mr. Belden or Mr. Wayland to visit this property and see it for myself. I don't remember their having repeated this request, but I remember them asking or referring to visiting the property. Mr. Belden gave me a piece of coal at some time, either one of the two times, either at the meeting or when I saw him at Spokane, and had the talk; I don't remember which one but it was on one of these occasions at Spokane. This being quite a long time ago my memory is not distinct as to the dates, but I am quite positive that he gave me the coal here at Spokane. After refreshing my recollection from a letter bearing date of May 3rd, 1907, which was written to me, I am still of the opinion that I received a piece of coal in Spokane. I do not remember having received a piece at the Fair, but I suppose I did; but I received a piece here. I cannot state the time that I received this coal. I could not even state

the year. I do not recall having received two different pieces of coal at two different times.

DEFENDANTS' EXHIBIT "74" identified by the witness and admitted in evidence.

(Witness excused.)

(Noon recess.)

R. B. GROVE, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

My name is R. B. Grove; my age is thirty-three; I live at Hillyard, Washington, and am engaged in the hardware and furniture business. I have lived in Hillyard about eight years. The letter which you show me was received by me from the post office at Hillyard with the newspaper clipping attached to it.

MR. GARRECHT.—I offer it for identification.

Letter marked PLAINTIFF'S EXHIBIT "85" for identification.

MR. GARRECHT.—Q. I will ask you, Mr. Grove, if at any time you were the owner of shares of Michel stock?

A.—Yes, sir.

Q.—Did you make any payments on your Michel stock?

A.—I did.

MR. GARRECHT.—Q. To whom did you make the payments?

MR. WILLIAMS.—That same objection; it is immaterial.

THE COURT.—I don't know what it is leading up to. Overruled.

Defendants except and exception allowed.

A.—I made the first payment to Mr. Demorest.

Q.—Did you make any to Mr. R. G. Belden?

A.—I made one of them at least to Mr. Belden. I received a receipt for the amount that I paid Mr. Belden, but I cannot say positively whether this is the one or the other payment. I made two payments after that first one. One of them I know was to Mr. Belden and the other one I rather think was to the stenographer.

(Witness excused.

F.W. BOYD, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht, as follows:

My name is F. W. Boyd, and I live nine miles northeast of Palouse City, in the neighborhood of Frese, Idaho. I am a farmer. At one time I became the owner of the stock in the Michel Coal Mines, Limited. Before investing I received letters through the mails. The letter which you hand me I received through the mails.

### PLAINTIFF'S EXHIBIT "76" admitted.

I remember receiving plaintiff's exhibit "70" through the mails likewise with the rest of it.

#### CROSS EXAMINATION.

by Mr. Williams he testified as follows:

I acquired my stock in the spring of 1906 or 7, I don't know just exactly when. It was one of the two springs, 1907 as a matter of fact. The letter that has been referred to was a letter in February, 1906.

On redirect examination the witness testified as follows: I have never seen either of the defendants and have never spoken to them.

(Witness excused.)

CHARLES HILL, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht, as follows:

My name is Charles Hill and I reside at Hartline, Washington. I am a laborer at present. At one time I had stock in the Michel Coal Mines Limited, which I purchased from Mr. Belden, with whom I had a personal talk in regard to it. I don't remember when this conversation took place but it was about seven years ago I think. He said the property was mountainous and that they had found coal on the property; said they prospected around several different places and found coal in three or four places; said they had made cat holes in several different places and none of them over six feet deep, he thought, and they had found coal in several of these places and there was another place in the bed of the creek where a vein six feet—he said he didn't know how thick the vein was, but they could see six feet of it and didn't know

whether that was—whether it was any thicker than that, but they could see six feet of the vein, a water fall where the water run over the coal. I asked him how soon he thought it would pay dividends and he said he couldn't tell.

And he said he couldn't tell exactly; that as near as he could tell it would probably be about a year.

MR. GARRECHT.—Q. Did he make any representations, in event you were dissatisfied, what he would do.

MR. WILLIAMS.—I object to that; that is not within the indictment in any way, not within any allegation there nor would it be material on any matter.

THE COURT.—I think perhaps it is a circumstance. He may answer that.

Defendants except and exception allowed.

A.—I told him that if he would give me a written guarantee that he would return the money inside of a year that I would take five hundred dollars worth of the stock; and he gave me a written guarantee that he would return it to me inside of the year if I called for it. I called for it in nine months. I called for the money, wrote to him and asked him to return the money.

MR. GARRECHT.—Did you see him personally?

A.—Not at the time I didn't see him. I wrote to him and I saw him when I bought the property, but

he said he didn't have the money; that he couldn't return it.

On cross examinatio nby Mr. Williams he testified as follows:

I resided in Hartline at that time and I was postmaster there. I did not at that time talk with any other person about buying this coal stock. I purchased at the time he was there; before he left. All of these things that I say occurred took place in one conversation at the time I bought the stock and there was nobody else present except he and I. We were in the post office. I was talking with Mr. Belden and we two were talking alone. The writing which I refer to was destroyed. I was burnt out and lost everything except what was in the safe and when I resigned I looked through all the papers I had and destroyed those that I thought was of no further value, and that was among those destroyed. I do not remember the exact date of this writing, but I think it was 1906 when he was down there as near as I remember. I can't say positively, neither can I tell the month. It seems to me it was in the spring, early spring of the year, but I am not sure though. I cannot say now what time of the day it was that we had our talk, and I have no recollection on the subject nearer than what I have said. Mr. Belden did not say how much coal was in the holes which he dug; he said he just scratched down to the top of the coal; found coal in different places, two or three of the places and he didn't say-said he couldn't tell; just struck coal. He did not say whether it was in a vein or not. He just simply said he found

coal, except the one that was in the bed of the creek. I said that he said there was a vein of six feet in the bed of the creek where there was a water fall. He didn't say whether it was any thicker than that or not but he could see six feet of it; he didn't know whether the vein was any thicker or not. As to the length of the vein, if I remember right, he said the creek was about a rod wide; I couldn't say positively; I think that is what he said, and one end of the water fall where they could see the vein for six feet. In regard to prospecting he said nothing more than they had scratched around on it a little bit. He did not say he had sunk down on it at all, nor did he say anything in regard to the depth of the vein. I did not ask anything about it. He did not tell me for what distance the vein showed neither did I ask him, any more than what I have said. I did not keep a copy of the letter which I wrote to Mr. Belden but I think it was written about the ninth month after I bought the stock as near as I can tell. I am not positive but I think it was about nine months after I bought the stock. I know it was inside of the vear after he gave it to me. I did not remember the first word of the paper which he gave me; I do not remember the paper particularly except it had the word "guarantee" in it, to return the five hundred dollars to me within a year if I called for the money; if I was not satisfied with the property and called for my money; something like that; something to that effect, but I do not remember the exact language. I don't remember that there was anything said to me about going up to visit the property and I did not talk with him as to whether I was going up to visit it. He never said anything to me about it, but I heard him talking to others in the post office, said that they were arranging, if I remember right, for several of the people around Hartline to go up and see the property, but nothing said to me personally. I heard the conversation and knew that Mr. Belden was trying to get the people to go up there personally and view the property. I did not know as it applied to me; I didn't know as it did. I did not go up to see the property and know nothing about it personally, except what may have been told me. I know positively that the word "guarantee" was used in the writing that he gave me; at least the substance of it was as I said that he guaranteed to return my money inside of a year if I was not satisfied with the property or called for the money back. I received no letters from the Michel Coal Mines Limited except the yearly reports. I told Mr. Belden when I bought the property that I would like to have a copy of the corporation laws of the state and he said he thought they had some in the office and he would send them to me. He sent a few papers, duplicates like, regarding corporations, but nothing of the law particularly. I can produce none of the letters I received from the Michel Coal Mines Limited as everything was destroyed. Mr. Belden signed the agreement that I say was given to me by him. I don't remember whether he put the name of the corporation down or not; I couldn't say as to that. know his name was on it. Further than that I cannot

say how the document was signed; I can't remember anything about it.

MR. WILLIAMS.—Q. And isn't it a fact also, Mr. Hill, that what your arrangement was, it was an arrangement with the Michel Coal Mines Limited giving you the privilege of disposing of some of your stock in case you desired?

A.— Yes, sir.

Q.—That is the—

A.—I think—yes, I think that there was something said about that too.

Q.—Look at this letter that I hand you and state if you received the original of that letter?

A.—I can't read; my eyes are not very good. Will you read it please.

(Counsel reads letter to the witness.)

A.—It seems to me I received a letter regarding the matter, I am not positive now.

Q.—Do you recognize that language as being the language contained in a letter that you received?

A.—No, sir, I don't remember it at present.

Q.—Can't tell anything about it?

A.—I have forgotten all about it. I know there was something said about it though, whether it was when he was down there when I bought the stock or whether it was afterwards when I saw him in the office, I can't say.

Q.—Isn't it a fact that the arrangement you made with Mr. Belden is the one that is stated in that letter which I have just read to you?

A.—If I received a letter from him at all it was something to that effect but I can't say positively now.

Q.—Well, will you say that this was not the arrangement?

A.—No, I wouldn't.

MR. WILLIAMS.—Now, if that is the fact, I move to strike his evidence. Now, he says that he will not say that this was the arrangement as stated in his letter.

THE COURT.—The weight of the testimony is for the jury.

Defendants except and exception allowed.

MR. WILLIAMS.—Q. I will ask again: Will you say that you did not receive the original of that letter that I just read to you?

A.—I wouldn't say that I didn't receive the original of it. I don't remember whether I did or not.

The letter read to the witness marked DEFEND-ANTS' EXHIBIT "77" for identification.

When I made this purchase I received what I supposed they call advance certificates. In reference to advance certificates 36 & 39, as I said before, I do not remember the exact date I received them, I cannot positively remember the year but it was somewhere

around February 12th, 1906. I did not get these certificates on the day that I talked with Mr. Belden, but did receive them several days later. If the advance certificates were issued in regular order on February 12th I would say that my talk with Belden was several days before February 12th. Within nine months or thereabouts I made the demand for the payment of this money. I recognize the signature to the letter which you hand me as my own signature and I must have written it on or about the date it bears, December 20th, 1906. In that letter I was referring to this investment in the Michel Coal Mines Limited and wrote the certificate in.

DEFENDANTS' EXHIBIT "78" admitted without objection.

MR. WILLIAMS—Q. Now, how did it happen, Mr. Hill, that if you demanded the return of your money within about nine months as you say, that you were writing such a letter as this down in December?

A.—I was dissatisfied with the property; I had lost confidence in it.

Q.—How does it happen that you did not demand the return of your money in this letter if you had such an arrangement?

A.—I can't say. I know that I requested the return of the money inside of a year; that is not a year after the stock was bought.

Q.—I understand, but I am talking about your testi-

mony before when you said it was within the nine months?

- A.—I said as near as I could remember it was about nine months, but it was inside of a year I know positively.
  - Q.—How do you fix it within a year?
- A.—I couldn't say. I know at that time I looked at the guarantee before I sent them money and I know at the time when I bought the stock but I don't remember just as to the time now that I requested the return of it; before the year was up.
- Q.—And you would not say that the language of that agreement that you had was not as shown in that letter that I read to you a moment ago?
  - A.—No, sir.
- Q.—You say that you had lost confidence in the company within the year's time? That is the reason then that all happened?
  - A.—Yes, sir.
- Q.—And you didn't have anything more to do with their stock?
- A.—No, sir. I think at that time that I afterwards sold the stock to Mr. Albough but I don't remember how long it was after I bought the shares, but I know it was more than a year after I bought the stock.
  - Q.—Before you sold the stock to Albough?
  - A.—Yes, sir.

I received the letter which you show me along about March 10th or 11th, 1907, signed by Mr. Belden. I don't remember anything about that. I do not remember the letter sufficiently to identify it.

The letter marked DEFENDANTS' EXHIBIT "79" for identification.

MR. WILLIAMS.—Q. Isn't it a fact that about March 9th, 1907, you were trying to trade or talking about trading for more stock in this Michel Company, about trading for that stock a contract that you had in the Washington Home Company?

A.—Might possibly be; I can't say that I didn't. I know they boosted the stock and claimed it was a very good property and I might have changed my mind and later on—

Q.—(Interrupting) But you say prior to that time, prior to March 9th or 10th, you had lost confidence in it and didn't want any of the stock?

A.—Yes, sir.

Q.—And that you say you might have talked with them about trading afterwards?

A.—Yes, sir.

(Witness excused.)

C. L. BUTTERFIELD, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht, as follows:

My name is Charles L. Butterfield and I live at

Moscow, Idaho, and have lived there for about twelve years. I am a dealer in agricultural implements. At one time I was an investor in the Michel Coal Mines Limited. I am now under the impression that I became a member of the company in 1906. I took an active interest in the affairs of the company.

MR. GARRECHT.—Q. Do you know who had the management of the affairs of the company during that time?

A.—Do I know, yes.

Q.—State who did have at that time?

MR. WILLIAMS.—May I ask one question: Did the minute book show the dealing with reference to management?

A.—Without question the Board of Directors had the management.

MR. GARRECHT.—Q. Who was the president?

A.—I was president of the company a portion of the time.

MR. GARRECHT.—Q. During the time that you were president of the company did they have a manager of the corporation that directed its affairs?

I am under the impression that they had; that there was a man that was called manager—I don't think there was a man that was called manager. My memory is not very clear on that.

Q.—They didn't have any one that the record would show as a manager?

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A.—The books will show; I am not clear on that now.

Q.—Well, would the books show that?

A.—The books would show whether there was such an official, so designated.

Q.—I am not asking you that; I am asking you if any individual had the actual control and management of the property regardless of what the book show?

A.—Why, yes; yes, they did.

Q.—Who had charge of that work?

A.—Why, R. G. Belden and A. E. Wayland, mainly.

The letter which you hand me presumably came through the mail—it must have come through the mails; I don't know how it could have gotten to me in any other way.

MR. GARRECHT.—Q. Can't you state yes or no whether you got that through the mails?

A.—I would say yes.

PLAINTIFF'S EXHIBIT "80" admitted in evidence without objection.

On cross examination by Mr. Williams he testified as follows:

The trustees of the company during the year 1905 will be shown by the records of the company but I have no doubt it is a fact that they were J. T. Penn,

R. G. Belden, C. L. Butterfield, J. H. Hemphill, P. S. Byrne, and E. L. Harvey. If they were, it was of short duration. I think in the year 1906 the trustees were J. H. Hemphill, William Hall, C. L. Butterfield, R. G. Belden, J. T. Penn, and R. Covington, the C. L. Butterfield being myself.

(Whereupon Mr. Williams read into the record the names of the officers serving during the first year.)

- MR. GARRECHT.—If it is agreeable we will prepare a list of all the officers of these corporations and submit them to you to be checked over.
- MR. WILLIAMS.—I suppose it will save some time.
- Q.—Now, when you speak of R. G. Belden and A. E. Wayland being the managers of these companies, on what do you base your statement, Mr. Butterfield?
  - A.—Why, on my personal observation.
- Q.—Were they ever elected, so far as you know, managers of these companies?
- A.—Why, they were elected as directors, and a director is in a way a manager, is he not?
  - Q.—Then you were in a way a manager?
  - A.—While I was a director.
- Q.—That is what you mean when you say Belden and Wayland were managers, is that they were directors?
  - A.—That is partially but not wholly it.

Q.—Well, Wayland was not a director during the year 1905 or the year 1906, so in what way do you say he was a manager, Mr. Butterfield?

A.—Well, the business of the company was merely attended to from their office.

Q.—You had the contract with them that has been entered into, appears of record, that is this contract with the Inland Surety Company, is that what you mean?

A.—Why, they were the active men in the coal proposition in the Michel Coal Mines. They were the active men; that is they knew the details, and they mapped out the line of work as a general thing.

I sold some stock of the Michel Company on commission, but I sold very little of it, and received my commissions on what I did sell.

MR. WILLIAMS.—Q. And in that respect you acted just the same as they did whenever you did sell stock?

A.—I can't answer that question, whether I acted as they did when I sold stock, because I don't know how they acted.

Q. I understand, but what I mean is your authority was the same in selling stock, and you sold it?

A.—Why, I supposed it was; I supposed my authority was the same.

(Witness excused.)

WILLIAM S. HART, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

My name is William S. Hart, and I have lived in Hartline, Washington, since 1889, that is in Hartline and in that vicinity. I am engaged in the grain business. I own stock in the Michel Coal Mines, Limited, and at one time was vice president, but cannot say the exact date, although I believe it was from November 25th, 1905, until February 19th, 1906; two terms, two years—two or three years I was vice president; I don't know the dates. During the time that I was vice president I know who had the active business management of the affairs of the corporation.

### MR. GARRECHT.—Q. Who did have?

A. The Inland Surety Company. The individuals or persons were R. G. Belden and Mr. Hemphill. I would not say for positive whether Mr. Wayland was in at that time or not.

On cross examination by Mr. Williams he testified as follows:

I believe I was vice president part of the time; at least they notified me I was. The reason that I say that the Inland Surety Company had the management of the Michel Company was because that was the company that was promoting the mines. What I mean is that they were the ones that had the sale of the stock.

MR. WILLIAMS.—Q. And when you say they

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had the management, that is what you refer to, that they had the authority to sell the stock?

A.—Yes, sir.

On redirect examination by Mr. Garrecht he testified as follows:

MR. GARRECHT.—Q. Mr. Hart, who had charge of the development work at the mines?

A.—Why, I believe Mr. Belden and the Inland Surety Company, whichever it was, as near as I know.

RECROSS EXAMINATION by Mr. Williams:

Q.—You mean they did the work on the property?

A.—They hired it done.

Q.—That they let the contract or something of that sort?

A.—Yes, sir.

Q.—And were these contracts in writing?

A.—I couldn't say; I never saw a contract.

Q.—Then that is simply hearsay or surmise on your part, is it?

A.—From letters that they wrote to me, what they were doing.

Q.—Did they tell you that they were doing it or that the Michel Company was doing?

A.—On the Michel property you are talking of now.

Q.—Yes.

A.—That they were doing it for the Michel was the understanding.

Q.—As I understand you to say, your understanding was it was the Michel Company doing the work, and not either Belden or the Inland Surety Company or some of those people interested in that coal property?

A.—They were doing the work for the Michel.

(Witness excused.)

G. W. JONES, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

My name is G. W. Jones, and I have lived in Spokane for nine or ten years. I am not engaged in business at the present time but at one time was interested in the Michel Coal Mines Limited. I had a talk a couple of times with Mr. Belden in regard to the Michel properties. As to Mr. Wayland I do not remember. He may have been present and might not. I think this conversation was in August, 1909. Mr. Penn, one of the promoters, owed me a mortgage and couldn't pay it, and he wanted to pay the interest and wanted to turn in some Michel property and I didn't want the property but he praised it so; said there was walls of it there in sight, and that they was waiting for a railroad to get in—

MR. WILLIAMS.—I object to that.

MR. GARRECHT.—We want you to tell what Mr. Belden said.

A.—When I went in to see Mr. Belden about it, Mr. Belden said the stock was twenty-five cents a share and wanted to sell me some and he said that the stock was going up to thirty-five cents in a month and I says "Mr. Belden, if the stock is going up to thirty-five cents will you give me ten cents a share for ten thousand or twenty thousand shares?" And he says "We are not buying, we are selling." He told me that the Michel Company owned the property but did not mention any names. He said that they have found a big strike on the property and were going to ship just as quick as the railroad got in.

On cross examination by Mr. Williams he testified as follows:

The conversation I have just related was in Mr. Belden's office and it was in the year 1909 and I think in August. I am pretty sure it was. I can tell by looking at the papers. I went there for the purpose of inquiring about the stock, on the recommendation of Mr. Penn, who told me to go and see Mr. Belden. I told Mr. Belden that Penn had sent me. I didn't tell him anything about that ten or twenty thousand, who I had the deal with, but told him about this one thousand that I had taken; in fact they put the certificate on record. I had already made my deal with Penn when I went up to see Belden. My visit to Belden had nothing to do with the stock I secured from Penn. Belden told me that the stock was held at twenty-five cents a share and that the company was going to raise the price to thirty-five cents a share. I

do not think I talked with him about the Crown Company but he might have showed me a map. He showed me a map at that time of different locations, but he didn't let me know that they owned any. At that time I was not familiar with the Crown Company nor with any of the others. I could not be certain whether I talked with him about more than one coal property when I was there or not. He might have mentioned the Crown, and he might not. Our subject mostly was the Michel property. What I have already testified to is simply the impressions on my mind that were put there by Mr. Belden at that time, and I am giving my impressions. In regard to the coal on the property he showed me a chart and told me the coal was right there and all they was waiting for was the railroad. He did not say where the strata of coal was but we were talking about the Michel mine. This was in 1909. He did not tell me where the strata was because I was not acquainted and it would not have made any difference. He told me how wide the strata was but I have forgotten. He told me it was right on the surface. He also told me how far they had traced it along the surface but I have forgotten the exact distance, but it was quite a ways. He did not tell me whether they had opened any veins or not, but that the coal was right on top of the ground, walls of it. He did not tell me whether they had found any of it in the creek bed; told me nothing about the creek. I do not remember if he told me they had found any of it scattered on top of the ground. He showed me maps where he claimed the coal was. The map

which he showed me was not a blue print, but a dark colored map. I never attended any meetings of this company. I know that the talk that I had with Mr. Belden was in 1909 and I fix the date by the date on the certificate which I got from Mr. Penn, and Penn wanted me to get a thousand dollars worth more. That was in 1909, in August. I know that. At that time I was not personally acquainted with Mr. Belden and had never done any business with him before. In regard to Mr. Belden having had considerable photograph work done with me prior to that time I would say that he never did to my knowledge, although he might have come into the store and left photographs with the clerks and had them developed in the dark room and I might not have seen them. My place of business along about that time was 1903 Riverside, but I am not in business: I closed the store. At that time I was in the business of photographic supplies. The map which you are now showing me is not the one that Mr. Belden showed me or is it anything like it. Prior to that time I do not believe I had been acquainted with Mr. Belden at all and did not know him by sight. He might have been in the store and I might have waited on him at some time and did not know who he was. Since that time I think I have been in Mr. Belden's office three different times, that is to see Mr. Belden, but I was in his office very often and talked to the lady very often in the office about the Michel stock. At the time I had the conversation with Mr. Belden I do not think there was anybody else present in the room. If there was I didn't notice it. I do not know whether I went into his private room or not, but it was an office off of the main office, off of where you go in.

(Witness excused.)

BAPTISTE LAMEREAUX, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht, as follows:

My name is Baptiste Lamereaux and I live at Crows Nest and have lived there for the last twelve years. I know where the Michel claims are located and have been there. I know Mr. Belden and Mr. Wayland and they have both been there. Mr. Belden and I located these claims. I believe I worked two years for the Michel Company but I don't remember exactly what years. I think I started to work there in 1905. I was prospecting on the claims, but did not locate any coal veins on them. I do not know exactly how long I was prospecting but I believe it was two summers.

On cross examination by Mr. Williams he testified as follows:

I only prospected the two years on the Michel. I have prospected for a number of years on the Michel and the Crown. I am not able to write but in the correspondence had with Mr. Belden and Mr. Wayland I do not remember who wrote my letters for me but there were some of them written by Andy Good. I am not able to sign my name. Whenever I desired to write a letter I simply went to some one

and had them write it for me and sign my name, and under circumstances like that I wrote a number of letters to Belden and Wayland.

A letter marked DEFENDANTS' EXHIBIT "81" for identification was read to the witness.

I think Andy Good wrote that letter for me but I don't remember exactly. I think it was.

A letter marked DEFENDANTS' EXHIBIT "82" for identification read to the witness.

I don't know exactly if that letter was written by Mr. Good, but I remember sending a letter like that.

A letter marked DEFENDANTS' EXHIBIT "83" for identification.

In regard to the copies of the two letters which have been shown me I do not remember whether I have the originals of them or not. I have not turned any letters over to the Government. I think I never kept any of my letters and might have destroyed them.

(Witness excused.)

L. W. LLOYD, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

My name is L. W. Lloyd, and I live at Camas Prairie, Montana. At one time I lived in Palouse City, Washington, where I was a hotel keeper, during the years 1905, 6 & 7. I traded for stock in the Michel Coal Mines Limited. I talked with Mr. Wayland about this property. He told me it was a good propo-

sition, that they had been doing some work on it, tunneling and building bunk houses and kitchen and blacksmith shop, I believe. He said they were coal propositions, showed it.

MR. GARRECHT.—What property, if any, did you exchange for the coal stock?

A.—Lots in Lidgerwood.

MR. GARRECHT.—Q. Did Mr. Wayland tell you what was to be done with the property that you turned over to the company?

A.—Yes.

Q.—State what he told you would be done with the property?

A. —It was to be used for the development of the Michel Coal Mines.

The letter which you show me they wrote to me at Nez Perce City, saying that they were issuing stock to stockholders. I received the letter through the mails.

MR. GARRECHT.-I offer the letter in evidence.

PLAINTIFF'S EXHIBIT "84" admitted

PLAINTIFF'S EXHIBIT "32" admitted without objection.

In pursuance of this circular I made subscriptions to the stock of the Michel Company and received certificates for the shares of stock named therein.

(Witness excused.)

H. S. HOUSE, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

My name is H. S. House, and I am expert bank accountant for the Department of Justice and have held that position about four years and a half. Immediately prior to going with the Department of Justice I was in the Rigg National Bank in Washington for about three years; and for a year and a half prior to that I was in the treasury department in Washington, and four years before that I was in a small bank in Missouri. I have examined the books of the International Development Company, and the Michel Coal Mines Limited, that have been introduced in evidence here and have made a specific examination of those books in reference to the purchase by R. W. Lloyd of 125 shares of the Michel Coal Mines stock.

(Witness temporarily excused.)

MRS. LUCY SHEPPARD, a witness called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

My name is Lucy Sheppard and I live in Butte, Montana, but lived in Spokane before I was married. My name at that time was Burke, Lucy Burke. I was at one time employed in the office of Messrs. Belden & Wayland, my duties being that of bookkeeper; and I also did some stenographic work. I took instructions from both of them in directing what entries should be made and on what books they should

be made. Mr. Wayland was supposed to be in charge, but he took his instructions I think from Mr. Belden, that is, according to how the entries should be. I kept books, that is, made entries in the books of the International, Michel, Crown, Empire, the Mills and I have forgotten the others if there were any.

MR. GARRECHT.—Q. Were the books of the various companies correctly kept?

A.—I did. I was there from the latter part of February but my salary did not begin until the first of March, 1910, and I left in August, 1911, August 31st.

ON CROSS EXAMINATION by Mr. Williams she testified as follows:

I did not always consult someone in making every entry; only the entries that were in question. I would consult someone whenever a question arose in my mind as to how the entry should be made; I always got information. Otherwise I went ahead and kept the books and made the entries myself unless there was a question. It is a fact that both Mr. Belden and Mr. Wayland were out of the city a large portion of the time while I was there, but in case of a question usually the stock was held up until someone came in. They were not always accessible to speak to, but in cases of that kind, why, things were kept over. That is, if it was a matter of question in my mind I would hold it open until I could talk to someone.

(Witness excused.)

J. B. CHRISTOPHERSON, a witness called and sworn on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is J. B. Christopherson, and I live at Opheim, Montana, and I am a farmer by occupation. At one time I was in the employ of Messrs. Belden & Wayland as bookkeeper, during 1909 and a part of 1910. I do not remember the exact date in 1910 when I ceased to be employed there, but sometime in the month of February. Miss Burke succeeded me I think. I began work sometime in March, 1909. In the office there, that is, the office of Messrs. Belden & Wyaland, I kept the books of the International Development Company, the Crown Coal & Coke Company, the Michel Coal Mines Limited, the R. G. Belden Company, the Empire Coal & Coke Company, and I think there was the Mills Syndicate under Belden and Wayland. At times they would direct me what entries should be made on the books of all of these different corporations. According to the information that was given me, the entries in the books were made properly as far as I know, and correctly also.

ON CROSS EXAMINATION by Mr. Williams he testified as follows:

I asked for instructions as to any entry whenever I was in doubt. Belden and Wayland were out of the office a large part of the time but in such case if I was in doubt I would hold up the books, but that would only refer to an item that I was in doubt about;

and if I was in doubt about some item I would hold that up until they returned so I could find out something about it. When I spoke of being employed by Belden & Wayland I meant the International Development Company, with which Belden and Wayland were connected. I kept the books of all of these companies.

MR. WILLIAMS.—Q. It is a fact, is it not, that some of these companies, the International and the Michel and the Empire, made a lump payment monthly to the International Development Company for the purpose of assisting in defraying the expenses of their work?

A.—I don't know in regard to my salary.

(Witness excused.)

J. H. HEMPHILL, recalled on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

During the time I was with the International Development Company I kept the books part of the time, and I kept not only the International Development Company's books, but the stock book of the Michel. I think I opened that; and the Crown books I opened. I had nothing to do with the Empire and am not sure that I opened any books for the Michel Company except I opened the stock register, or stock ledger. I cannot tell without looking at the books the exact dates between which I kept the books of these com-

panies. It was evidently from May, 1905, to September, 1907, since I have refreshed my memory. I don't remember who succeeded me as bookkeeper but there was a man that we had in the office for a short time who was not very successful and I think I then kept the books for a little while longer. The entries which I made were correct, according to the information which I received. I do not believe any one directed the entries that were made in the books as I had charge of that absolutely.

ON CROSS EXAMINATION by Mr. Williams he testified as follows:

I suppose that the records were kept correctly; I did the best I could to keep the books; they showed a balance, but there might have been some mistakes made. I severed my connection with the International Development Company I think in August, 1908. During the remainder of the year 1907 and up to August, 1908, I occasionally directed entries in the book. The fact of the matter is that Mr. Belden, Mr. Wayland and myself would occasionally suggest to the bookkeeper the entries. That would arise when the bookkeeper would come to me and say: "How should this be entered?" or "Where should it be entered?" and I would try to tell him correctly. The bookkeeper usually came to me for instructions. I think during the entire time from May, 1905, till September, 1907, I did all of the bookkeeping myself.

MR. GARRECHT.—Q. During that time you made no intentional errors?

A.—No, sir.

(Witness excused.)

MISS RETHA COVINGTON, recalled as a witness for the Government, on direct examination by Mr. Garrecht, testified as follows:

I have kept the books of these corporations since March, 1912, but prior to that time I helped keep the stock registers and stock certificate books of the various companies. Ever since I have been with the company I have done some work on the stock ledgers, transferring stock and things of that kind, that is, since 1905, December of 1905. In regard to the entries which I made in the books, and the work of that kind which I did I may have received instructions from Mr. Hemphill or Mr. Belden or Mr. Wayland or might have been Mr. Butterfield; might have been any of the men that happened to be in the office at the time that had anything to do with the company's work. Mr. Butterfield has come into the office a number of times and told me to make transfers. This, however, would be in the ordinary course of my duties, when the certificates were surrendered, and I always tried to make them correctly.

Outside of the mere transfer of certificates which Mr. Butterfield surrendered to me at the time they were made I do not think he ever directed me to make any other entries in the books. After Mr. Hemphill severed his connection with these companies in 1908 he never at any time directed me to make any entries

in these books. So far as I know, the entries that I made in these books were correct, from the information that I had at the time.

ON CROSS EXAMINATION by Mr. Williams she testified as follows:

I was trying to keep the records straight but do not mean to say that I didn't make any errors; none of us are infallible; I guess we all make mistakes. I would not always go to Mr. Belden or Mr. Wayland or some of these parties for instructioons in making the entries. In fact, I appealed to them for instructions in very few cases. They were very seldom consulted in regard to the stock register entries; we seemd to think there was no occasion. With reference to the credits of moneys or things like that, I had nothing to do with that at all; they were entered up by the bookkeeper. Once in a while, if I was in doubt and didn't know exactly what to do, I would go to Belden and Wayland, but very few times I ever consulted either of them. During this time Mr. Belden and Mr. Wayland were out of the city a great deal of the time, more than half of the time during some years. I. do not remember of either Mr. Belden or Wayland having made personal entries themselves. I do not know of any entries being made in the books improperly; I had no knowledge of it if such was the case.

ON REDIRECT EXAMINATION by Mr. Garrecht she testified as follows:

During the absence of Mr. Belden and Mr. Wayland I had charge of the books and the office.

(Witness excused.)

(Adjournment until 10 A. M.)

- C. W. HILL, recalled for cross examination by Mr. Williams, testified as follows:
- Q.—Mr. Hill, referring further to the question of Mr. Belden's guarantee to return the money that you invested, I will ask you if it is not a fact that this is what happened between yourself and Mr. Belden: That you received in purchasing this stock, what is known as an advance certificate, the original certificate not to be delivered to you for a period later, to the end that you could not sell the stock at that time in competition with the company, and that Mr. Belden agreed with you at that time that in your particular case you might sell sufficient of your stock in case the necessity arose, so as to realize a portion of the five hundred dollars invested, and that is what happened between yourself and Mr. Belden?
- A.—I don't think so. I know that he gave me a receipt. I would not buy the stock unless he gave me a guarantee to return the five hundred dollars inside of a year; I am positive of that.
- Q.—Just answer that question straight, will you say that that agreement was not made by Mr. Belden with you.

A.—At the time I bought the property?

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Q.—The one I have stated, yes?

A.—They might have said something about selling

a part of it. I think I got the whole ten thousand shares in one certificate when I first got it, if I remember right, and I told them afterwards I would like to have the certificate changed and two certificates so I could sell a part of it and realize the five hundred dollars out of it. That is all I remember.

MR. GARRECHT.—Do you want to make an explanation of your testimony yesterday?

MR. GARRECHT.—The witness spoke to me outside.

A.—I would like to.

THE WITNESS.—Would you let me see this letter that you showed me yesterday?

MR. GARRECHT.—I will read the letter.

"Dear Sir: Through Mr. Belden we understand that you have been promised the privilege of disposing of sufficient of your stock—" etc.

Q.—You said yesterday that you purchased your stock several days prior to February 12th, 1906, and that you had an arrangement that you might get your money back within one year and that within about nine months from that time you desired the money returned and it was not returned?

A.—Within the year.

Q.—And as I understand you today, Mr. Hill, you had become dissatisfied with the thing about nine months afterwards and did not want any more to do with it. Now, I will ask you if it is not a fact that you were negotiating for more stock of the Michel Company more than a year after your original purchase?

A.—No, sir; that was not the idea. That Washington Meteor stock was considered worthless, or nearly so.

Q.—Washington Home stock?

A.—I had 8000 shares with a broker here to sell.

THE COURT.—I think this matter has all been gone over.

MR. GARRECHT.—He wants to show his explanation of that letter, that they are going to show he was going to trade stock although he thought the stock valueless.

R. W. LLOYD, recalled for cross examination by Mr. Williams, testified as follows:

Q.—Now, you say that you talked with Wayland concerning these properties?

A.—Yes, sir.

Q.—I understood you to say that what Wayland told you was that they were doing some work on the Michel Company, that they had erected a blacksmith

shop and that he thought it was a good proposition. Is that correct?

A.—Yes, sir.

I traded two lots in Lidgerwood for some of this stock. Mr. Wayland wrote to me in regard to trading these lots, as an officer of the R. G. Belden Company, as its secretary. The fact is I turned these lots over at the time I made this trade to the R. G. Belden Company. I have no recollection of having been notified by Mr. Wayland in a letter that the company, so far as their stock was concerned, was selling only for cash or approved notes. The most of the letters that I have received from either Belden or Wayland or the R. G. Belden Company have been destroyed. I have none of them at all, and have furnished none to the government except the carbon copy which was put in evidence yesterday. I have no recollection whatever of having received the letter which you show me marked "plaintiff's exhibit 85" for identification. I wrote the letter which you show me.

DEFENDANTS' EXHIBIT "86" admitted.

MR. WILLIAMS.—Q. Will you say about that, Mr. Lloyd, does that refresh your recollection now any as to whether you received this letter marked Exhibit 85 for identification?

A.—I would not say positively that I received it or didn't receive it. That is in regard to that oil

stock trade. That is my letter (referring to exhibit 86). I wrote this other letter which you show me.

The letter identified by the witness marked DE-FENDANTS' EXHIBIT "87", for identification.

In answer to that letter I received this letter which you show me about the date that it bears, September 28th, 1906, although I cannot be absolutely sure about the date of its receipt.

The letter identified by the witness marked DE-FENDANTS' EXHIBIT "88", for identification.

MR. WILLIAMS.—You know now, do you not, Mr. Lloyd, that the trade that you were making, you were making with the R. G. Belden Company?

A.—Yes, I suppose so; it was through Mr. Wayland I was making it.

Q.—Now, you are quite sure that it was two lots, Mr. Lloyd?

A.—Well, that is my understanding. The deed was made through another party.

Q.—The fact of it is that you had taken an assignment of a contract for a lot in Lidgerwood Park from a Mr. Demorest?

A.—Yes, sir.

Q.—And later you had wanted to trade any equity you had in that lot in to the R. G. Belden Company for this coal stock?

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A.—Well, Mr. Wayland wrote to me first in regard to it.

THE COURT.—Answer that question directly.

A.—Yes, sir. I cannot give you the exact legal description of the property in Lidgerwood as I have lost all recollection of these lots.

MR. WILLIAMS.—Q. How did you expect that the Michel Coal Mines Limited was going to use a vacant lot out here in the development of the coal property, Mr. Lloyd?

A.—I had no idea how they were going to use it. They made the proposition to me and I took it.

On REDIRECT EXAMINATION by Mr. Garrecht, he testified as follows:

Q.—Did you in that trade which you had about the lots, have anything to do with the other purchase of 125 shares that you got afterwards?

A.—No, sir.

(Witness excused.)

- H. S. HOUSE, recalled on direct examination by Mr. Garrecht, testified as follows:
- Q. Have you made a specific examination of the books with reference to the purchase by R. W. Lloyd of 125 shares of the Michel Coal Mines stock issued, certificate No. 400?

A.—Yes, sir, I have.

- Q.—Will you show from the books where the money went and what stock was issued therefor?
- A.—Referring to Government's exhibit No. 45, which is the stock certificate stub book of the Michel Coal Mines Limited—
- A.—Reading from Government's Exhibit No. 45 which is a stock certificate stub book of the Michel Coal Mines, certificate No. 400 for one hundred and twenty-five shares was issued to R. W. Lloyd, Nez Perce, Idaho (reading the stub of the certificate). Now, reading from Government's Exhibit No. 34, cash book of the International Development Company, page 42, on the left hand side it says (reading). 93 is the ledger page, \$25.00.
- MR. GARRECHT.—Q. Now, state to the jury what this entry shows, as an expert?

The International Development Company was the owner of the original certificate. From the time the Michel Company was organized in 1905 up to January 1st, 1912, there had been disposed of treasury stock of the Michel Coal Mines, a total of 290,560 shares of stock.

- MR. GARRECHT.—Q. During that time how much of the treasury stock of the International Development Company was sold?
  - A.—There had been disposed of 963,532 shares.
- MR. GARRECHT.—Q. How much treasury stock was disposed of during 1909?

A.—There was 500 shares disposed of, for which the company received nothing.

MR. GARRECHT.—Q. Now, how much was received from the sale of the treasury stock?

A.—The Michel Coal Mines Company Limited received for their treasury stock \$26,838.75.

MR. GARRECHT.—Q. Now, during the year 1909, the same period, how much of the treasury stock of the International Development was sold, of the Michel?

A.—The total I gave you was the entire amount received for treasury stock; not just for that one year.

MR. GARRECHT.—Q. What was the total received for the International Development's stock?

A.—The International Development Company received for their stock that was sold, for their personal stock that was sold prior to January 1, 1912, a total of \$85,399.24.

ON CROSS EXAMINATION by Mr. Williams, he testified as follows:

As to the question of sales of personal stock of the amount which I have mentioned, this was actual sales. It may include a little stock that was given out as a bonus to Miss Covington and a few sales like that of a few shares. I have the tabulation here by years and I have copies of this which you may have. The figures which I have given as the sales of the Inter-

national Development Company was all the sales that they made, including the stock that was charged to the agents' accounts, in lieu of commissions due them, some of it being given out as agents' commissions. My tabulation does not show how much stock they returned.

(Witness excused.

W. J. WOODS, called and sworn as a witness on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

I live at Waitsburg and have lived there about thirty-two years and am engaged in the business of farming. I know both of the defendants in this case. At one time I owned stock in the Michel, the Crown and the Empire. I have seen a prospectus like Plaintiff's Exhibit 31 for identification before and have had that in my possession. I got it at the International Development Company's office in the Peyton Building. The defendants Belden and Wayland gave it to me together with a bunch of literature they were making up for me to take to Waitsburg.

PLAINTIFF'S EXHIBIT "31" admitted without objection.

ON CROSS EXAMINATION by Mr. Williams he testified as follows:

Q.—Mr. Woods, you say that you purchased some stock?

A.—Yes, sir.

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Q.—You retained the stock?

A.—No, sir.

Q.—That is, you sold it to somebody else later?

A.—Yes, sir, I did.

Q.—You didn't pay anything for the stock, did you?

A.—Some of it. Do you have reference to the Michel or some other?

Q.-Well, the Michel?

A .-- No, I gave my note in payment.

Q.—Never paid it?

A.—I gave my note, I say.

Q.—Yes, but you never paid the note?

A.—No, sir.

(Witness excused.)

J. J. THOMAS, called and sworn on behalf of the Government, testified on direct examination by Mr. Garrecht as follows:

My name is J. J. Thomas, and I reside in Philipsburg, Pennsylvania. By occupation I am a mining engineer and have followed that profession for seventeen years. I have been on the property of the Michel Coal Mines Limited, the Empire and the Crown Coal & Coke. I made a surface examination and in the tunnel of the Michel property.

It was about the first week in June, 1911, that I made an examination of the Michel property. At that time I was working under the direction of Mr. C. L. Hower, who was mining engineer of the property or rather mining engineer for the Crown Coal & Coke Company. I made the examination at the request of Mr. Hower, who had made a report on the property sometime before that, and he asked me when I first went in on the property to make a further and more extensive examination of the Michel group of mines, to make sure if there was any coal on the property; so I spent about three days down there before going up on the Crown to continue the work. This was not when I first came up to this section. I found no coal on the Michel property. I had charge of all the field work that was being done up there on the Empire, the Michel, and the Crown properties. regard to what I did on the properties, I would say that on the Michel property, these four claims in here (indicating) I came on down to a little below, about a mile or a mile and a quarter below the part in which measures were exposed, and I traced them up for about half a mile, and I found in there the Bampf shale exposed to a thickness of about six hundred feet. Coming up along the creek I found exposures of the Fernie shale clear all the way up to the camp. Fernie shale is below the coal. There could not be any coal below the Fernie shale; after you find the Fernie shale exposed you would not expect to find any coal beneath it. I am a geologist, as pertains to coal; I am not a metallurgist. At the

time of the period of mountain building the frost came from the west and the rocks and the plains resisted and when the fracture took place it uplifted the mountain in a series of what we call overlaps and step faults, and in which lays the rocks of the Devonian and carboniferous period, which are really a whole measure in this little step fault. For instance, here are the rocks of the Devonian carboniferous period, and these over here of the Cretaceous age, on top of it, and these in time eroded away until the harder rocks of the limestone period remained, and the peaks of the mountains are composed of these; and these faults, these series of steps, there would be one like that and one coming up this way and on back (illustrating) the coal laid in between them.

(Here the witness illustrated the formation by the use of books and a drawing on the black board). The coal would always be above the Fernie shale and the Bampf shale and when you get down below the Fernie shale and the Bampf shale I would conclude that there would be no coal, we would be below the coal; there would be a barren area below that. On the Michel I found the Bampf shale, which is a barren area. I examined the tunnel that was in the Michel and found it to be in a combination of the Fernie shale and Bampf shale, where they began to bind together. The tunnel had been constructed to the Fernie shale, right into it, and it is very improbable that there would be any coal discovered after that. I also examined the Empire. You go up this creek on the

Empire, this gulch, up probably half a mile, a quarter of a mile, and you find limestone rocks there exposed very clearly all along that cliff. That would indicate barren territory with no likelihood of coal being there. The Empire tunnel is right in here (indicating). That was not on the Empire ground but on ground belonging to the Crown Coal & Coke Company. There was no tunnel whatever on the Empire property and no opening that I know of. The Crown ground is these four claims, and a fraction, colored in red. These are Crown granted and there is some leased sections, those colored in blue. There is coal on the Crown granted sections of the Crown Coal & Coke Company. The outcroppings of the seams are at the top of the mountain, as shown in this section (indicating) and would run around in about that direction (indicating), from here on down westerly, down these two sections. I have been over the Crown's land very thoroughly and all of the crown granted sections, at the least. However, the only coal found is on the four crown granted sections and I would judge, without looking at my notes, that there would probably be about twelve hundred acres underlaid with coal. During the time I was making my investigation both of the defendants were up there, both singly and together at different times. We have talked over the thing in an unconventional manner but I never made any definite report to either one of the defendants. I did, however, make a report to Mr. C. L. Hower, who was in the office of the defendants. Mr. Wayland and I discussed the

geology of the country up there. I had a talk with Mr. Wayland concerning the property in July, 1911.

(Whereupon Mr. Williams examined the witness in detail.)

## J. H. HEMPHILL, recalled.

Page 5 of the minute book of the Crown Coal & Coke Company admitted without objection and marked PLAINTIFF'S EXHIBIT "89".

I staked all of the ten claims of the Crown Coal & Coke Company.

PLAINTIFF'S EXHIBITS "90" to "99" inclusive were admitted without objection.

To my positive knowledge there were no previous locations of these claims prior to the time I located them.

PLAINTIFF'S EXHIBITS "100" and "101" admitted without objection.

MR. GARRECHT.—Q. I will ask you to examine Plaintiff's Exhibits 100 and 101 and ask you to state to whom these shares of stock belonged, if you know?

A.—They belonged to the International Deveelopment Company.

Q.—You may state for how many shares of stock each of these certificates were?

A.—No. 9 is for fifty thousand shares and the other

one is for a hundred thousand shares. I think they were issued in the names of W. A. Hemphill and L. Whitney in order to make diversified entries, to show more diversified entries to the original promotion. I cannot say as to whether I had the proxies to vote this or not.

- MR. GARRECHT.—Q. Did some member of the International Development Company have the proxies?
- A.—I could not say as to the proxies at that time. May I answer the statement as I recollect it there?
  - Q.—Yes, you can explain your answer if you wish
- A.—I don't think at that time the proxies were ever asked for. The proxies were sent out and whether they were sent in in my name or not I don't know. The proxies were sent out as directed under the bylaws of the company. Whether all of these proxies came in or not I do not know.
- Q.—You said it was for the purpose of showing a diversified control. Now, why was that; what reason did you have for wanting that to appear; what reason was there for wishing that to appear?
- A.—There had been a desire on the part of some of the people that came in for it and at the last minute some of the people who subscribed to shares didn't take them.
- Q.—Was it one of the conditions required in order for the stock to be sold?

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A.—I don't think so.

PLAINTIFF'S EXHIBIT "10" admitted without objection.

PLAINTIFF'S EXHIBIT No. "103" admitted over the objection and exception of the defendants.

(Witness excused.)

C. A. BRYAN, a witness called and sworn on behalf of the Government, on direct examination by Mr. Garrecht testified as follows:

MR. GARRECHT.—I want to offer specifically pages 29 and 30 of Plaintiff's Exhibit 54.

MR. WILLIAMS.—To which we object as incompetent, irrelevant and immaterial and having nothing to do with any of the issues in this case.

THE COURT.—It will be admitted.

(Defendants except and exception allowed.)

PLAINTIFF'S EXHIBIT "104" admitted in evidence.

My name is C. A. Bryan and I live at North Prosser, Washington, and am station agent for the Oregon-Washington Railroad & Navigation Company. I received a book like the one which you have shown me from the defendants, in the office. Mr. Belden either gave it to me or had Miss Covington give it to me.

MR. GARRECHT.—We offer that in evidence.

(Whereupon Exhibit 104 was read to the jury.)

MR. GARRECHT.—We offer page 31 of the Government's Exhibit 54.

PLAINTIFF'S EXHIBIT "105" admitted, being page 31 of Plaintiff's Exhibit 54.

MR. GARRECHT.—We offer pages 39 and 40 of Plaintiff's Exhibit 54.

MR. WILLIAMS.—To which we object as incompetent, irrelevant and immaterial and not within any issues in the case.

THE COURT.—It will be admitted.

(Defendants except and exception allowed.)

PLAINTIFF'S EXHIBIT "106" admitted.

MR. GARRECHT.—We offer this pamphlet in evidence.

MR. WILLIAMS.—To which we object as incompetent, irrelevant and immaterial and for the further reason it is not shown in the evidence it had anything to do with the defendants and not within the issues.

THE COURT.—Objection overruled.

(Defendants except and exception allowed.)

PLAINTIFF'S EXHIBIT "107" admitted.

On CROSS EXAMINATION by Mr. Williams he testified as follows:

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- Q.—Who did you say delivered to you the prospectus, Mr. Bryan?
- A.—Mr. Belden either gave it to me or had Miss Covington give it to me.

(Witness excused.)

F. L. FERRELL, recalled, testified on direct examination by Mr. Garrecht as follows:

I had stock in the Crown Coal & Coke Company only, and before purchasing it I met Mr. Belden in Milwaukee.

MR. GARRECHT.—Q. State what was said and done between you and Mr. Belden with reference to the coal property.

MR. WILLIAMS.—May I ask a question on voir dire?

THE COURT.—Yes.

## EXAMINATION ON VOIR DIRE BY MR. WILLIAMS:

Q.—Mr. Ferrell, that was before the Crown was organized, wasn't it?

A.—Yes, sir.

Q.—That was with reference to your becoming one of the syndicate members and forming the Crown Coal & Coke Company?

A.—Yes.

Q.—And that syndicate turning the property over to the Crown?

A.—Yes.

Q.—Did you purchase any stock in the company after its incorporation?

A.--No.

THE COURT.—Did you at any time?

A.—I purchased it from other parties—I want to correct that answer. I did purchase some stock from the company later on yet, I will correct my former answer.

MR. GARRECHT.—Q. State, Mr. Ferrell, what was said and done between you and Mr. Beldeen in reference to this?

A.—Mr. Belden—he said that an option had been obtained on ten coal claims in the Crows Nest district of British Columbia; that these ten coal claims belonged to ten separate parties and that a syndicate was to be formeed composed of twenty shares; six of these shares were to be given to the International Development Company for their trouble, their work and expenses in obtaining the option on these ten coal claims. The other fourteen claims (shares) were to be sold at fifteen hundred dollars a share.

This \$21,000, together with 100,000 shares of stock in a coal company that was to be formed here, which was afterwards named the Crown Coal & Coke Company, were to be handed over to these ten parties or

original owners of the coal claims. I agreed to go up and look at the property and in June of that year Mr. Smith of Milwaukee, Mr. Wheeler of Minneapolis and myself went up to Crows Nest, British Columbia and looked the property over. When I came back to Milwaukee I subscribed for one and one-half shares of this syndicate stock and sent a draft for \$2,250.00 to the International Development Company in payment of that. The company was formed in September of that year, 1906, in Milwaukee. All the papers for the formation of that company were made out in Spokane and sent to us in Milwaukee by Mr. Belden with instructions as to what to do in regard to forming this company. After the company was formed, for this \$2,250.00 I received 75,000 shares of coal stock and a proportionate rate of interest in a trustee's certificate calling for 150,000 shares of coal stock. The letter which you show me I received through the mails.

MR. GARRECHT.—We offer this letter.

This letter previously identified by the witness admitted as PLAINTIFF'S EXHIBIT "108".

The letter which you now show me I also received through the mails.

MR. GARRECHT.—We offer it in evidence.

The letter identified by the witness marked PLAINTIFF'S EXHIBIT "109" in evidence.

The letter which you now show me I received through the mails.

MR. GARRECHT.—We offer the letter.

The letter just identified by the witness admitted and marked PLAINTIFF'S EXHIBIT "110".

After the receipt of that letter I purchased ten thousand shares of stock. This other letter which you now show me I received through the mail.

MR. GARRECHT.—We offer this letter.

The letter just identified by the witness admitted in evidence and marked PLAINTIFF'S EXHIBIT "111".

The letter you now show me I also received through the mails.

MR. GARRECHT.—We offer it in evidence.

MR. WILLIAMS.—To which we object as incompetent, irrelevant and immaterial and not within any issues.

THE COURT.—It will be admitted.

The letter identified by the witness admitted and marked PLAINTIFF'S EXHIBIT No. "112".

MR. GARRECHT.—Q. I now ask you to examine Plaintiff's Exhibit 69, and state if that is the letter referred to in the one you just read; that is the one that was read yesterday?

A.—Yes, that is the one referred to. At one time I took a trip with Mr. Belden to Idaho and on that trip we had a discussion relative to the Empire property. I asked Mr. Belden how he could sell Empire

stock or stock of the Empire Coal Company when there was no indication of any coal on the property, and he replied that they did not pretend there was any coal there.

On CROSS EXAMINATION by Mr. Williams he testified as follows:

I did not reside in Spokane permanently, but temporarily; I resided here temporarily I think about six months, from September, 1909 to March, 1910. At that time I was not connected with the Crown Coal & Coke Company as an official but at one time I was president of the company, that is the first year, 1906, my term expiring the first part of January, 1907. I had the talk that I have referred to with Mr. Belden in 1909, I think in October, but I have no definite way of fixing the exact month or day, nor is there any way that I know of refreshing my recollection in regard to it. It was during my temporary residence in Spokane, and I came here in September, 1909, and left in March, 1910. I have no letters from Mr. Belden dealing with that period of time. We went to Idaho for the purpose of seeing the country and we were just traveling around together. I think I served as president of the Crown for one full term and part of another, and the portion of term that I served was before the regular term. It was in 1906 that I served the portion of the term. The company was formed in September, 1906, and then I think I served the full term in 1907 and went out of office in January, 1908. I was not up for reelection in the meeting of January, 1908; I never was up for re-election again. I served as vice president in 1908, but as to 1909 I don't remember whether I was vice president then or not.

MR. WILLIAMS.—Q. The fact is you are a particularly bitter enemy of Belden's, are you not?

A.—No, I wouldn't say particularly bitter enemy, no.

Q.-Well, are you a bitter enemy of his?

A.—No.

Q.—Haven't you stated since you came out here that you were coming out to Spokane for the purpose of putting Belden in the pen?

A.-No, sir.

Q.—Do you know where Kronenberg's saloon is in town?

A.—Yes, sir.

Q.—Were you in there on the evening of the 20th of this month?

A.—I was in there one evening I don't remember what evening.

Q.—Isn't it a fact that in Kronenberg's saloon on the evening of the 20th of this month in the presence of Mr. Kronenberg, one of the partners, and Mr. Shaffer, a bartender, you were addressing the assembled people there—you were intoxicated that evening, were you not?

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  - A.-No, sir.
- Q.—Were you under the influence of liquor at all that night?
  - A.-No, sir.
- Q.—Weren't you announcing to the assembled people there that you came out to Spokane for the purpose of sending Belden and Wayland to the penitentiary?
  - A.—Not that I remember of, no.
- Q.—Did you make any statement in there about what you were going to do to Belden and Wayland?
  - A.—No, sir, not that I remember of.
- Q.—Now, the fact is that practically you have been an enemy of Belden and Wayland since the stockholders' meeting in January, 1910, isn't that a fact?
- A.—Well, I haven't had any friendly feeling for them, no.
- Q.—You came out here for the purpose of controlling that meeting, didn't you?
  - A.—No, sir, not that time.
- Q.—And isn't it a fact that that combination broke down because Mr. Butterfield finally didn't come through and support you?
  - A.—He didn't vote with us.

THE COURT.—I think this inquiry has proceeded far enough.

I do not remember what particular point in Idaho we were at when Belden made the statement I referred to. It was on the train. I think we were in Idaho but I wouldn't exactly state that. I do not remember how long we had been out of Spokane but it was a continuous journey from Spokane on the train. No other person was present when this conversation happened. I had never looked over the property but had read the prospectus in Belden's office. I had never prospected this property and had never looked over it to see whether there was coal there or not, nor had I had an investigation made for me for that purpose. I knew that there had been no work done up there and from what I had heard in the office there had been no coal uncovered there.

- Q.—What you asked Mr. Belden was why they were selling stock when they had not found the coal yet; is that it?
- A.—I said when there was no indication of coal on the property.
- Q.—Did Belden tell you there wasn't coal on the property?
- A.—He said they didn't pretend there was any there.
  - Q.—That there wasn't any coal under the ground?
  - A.—Well, that is just as I remember it.
- Q.—Was he referring at that time to surface indications or what?

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  - A.—I don't know what he was referring to.
- Q.—You didn't understand him as stating that the strata of coal was not under the ground?
- A.—Why, I understood him to mean that there was no coal there as far as—there had been no coal found on the property.
- Q.—What you understood was that it was not proven coal ground yet?
  - A.—Yes.
  - Q.—What is your business?
  - A.—Grain business.
  - Q.—You sell on margins, do you?
- A.—Yes, buy on margins. The letters that have been presented here from either Mr. Belden or anybody else are not all the letters I received; I think I sent some more out here. The letter which you show me marked Defendants' Exhibit 131 for identification is my letter and that is my signature, as is also Defendants' Exhibit 114 for identification. I am acquainted with Herman Smith who at one time lived in Milwaukee but at present lives in Philadelphia. He was engaged in the grain business, he and I having offices together, that is desks in the same room. He is a particular friend of mine and I am familiar with his signature. The document marked Defendants' Exhibit 113 for identification is in his writing and is his signature. This stock that I bought later on, it is

stated in this letter was part of this stock that Belden and Wayland were buying from others but I didn't know just where they were getting it. I am referring to the ten thousand shares for which I paid fifteen cents per share. I did not consider that I went into partnership with them in buying this stock, but bought it outright. I never asked to go into partnership, but I don't think the proposition ever came from me, if I remember right.

(Whereupon an adjournment was taken until Monday, April 27th, 1914, and thereafter court duly convened, all parties present as heretofore.)

F. L. FERRELL resumed the stand for further cross examination by Mr. Williams and testified as follows:

The letter marked Defendants' Exhibit 116 for identification was received by me from Mr. Belden, also Defendants' Exhibit 117 for identification. After the organization of the Crown Coal & Coke Company I was acting as its agent in the sale of its stock, and there were a number of other people acting as agents in the sale of this stock other than the International Development Company, including Mr. Butterfield. I would consider that that continued up to the time of this annual meeting that I referred to on Friday, which was held in January, 1910, although I did not sell any stock in that company I do not believe after about the latter part of 1908 if I remember correctly. As far as I know, up to the fall of 1909 the sales that

had been made of treasury stock were cash sales; at least I always supposed they were cash sales. I never knew of the company authorizing sales on notes; I don't remember of it anyway. I think my total sales were about twenty thousand shares, if I remember correctly, that is, cash sales. The person who made the sale got the commission and the International Development Company did not take any part of it. During all this period of time the International Development Company was furnishing quarters for them here in Spokane, although I think the Crown was paying rent. Mr. Wayland was secretary of the company and receiving a salary for doing the work. Along in 1907 it was voted to pay Mr. Belden two hundred dollars a month salary and an allowance was voted to Wayland of two hundred dollars a month, and an allowance to Belden for a part of the year of fifteen hundred dollars for acting as general manager up at the property. I am not sure that out of that they were to pay the office expenses of these companies and employ the office help. I think it was two years that Belden and Wayland received salaries from these companies; I think it was 1908 and 1909. I know that Mr. Butterfield was voted fifteen hundred dollars a year salary by the Crown Company, but I do not know that they paid only one-half of his salary.

MR. WILLIAMS.—Q. And you know that Butterfield during that time was working on the time of the flotation of these companies and getting the railroad in?

A.—He was working on a bond issue, I believe.

Q. That is, you all realized in the early stages of the proceedings that it was necessary to raise money by a bond issue in order to build the road and start the operation of the Crown?

A.—I recall that at the meeting in January, 1910, Mr. Wayland demanded of the meeting that his books and records should be experted by auditors, and that LeMaster & Cannon, certified accountants of Spokane, were employed to go over the books and audit them. They were audited at that time but I do not know anything about subsequent audits.

On REDIRECT EXAMINATION by Mr. Garrecht he testified as follows:

The only company I was a member of was the Crown Coal & Coke Company and I did not have anything to do with the various other companies and know nothing about their affairs. When I answered questions that embodied these other companies my answer was confined strictly to the Crown Coal & Coke Company. While I was acting as agent in the sale of the Crown stock I was selling treasury stock and at no time sold any of my personal stock. The salary which I mentioned which was receiveed by Mr. Butterfield amounting to fifteen hundred dollars per year from the Crown was the only salary I knew he was getting. I was subpoenaed by the marshal in Milwaukee to appear at this trial.

On RECROSS EXAMINATION by Mr. Williams he testified as follows:

I did not investigate to see whether I had to obey the subpoena at that distance.

PLAINTIFF'S EXHIBITS "118", "119" and "120" admitted in evidence without objection.

(Witness excused.)

ALFRED BALLENTINE, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht testified as follows:

My name is Alfred Ballentine and I live in Milwaukee, and I am a member of the Clearing House and Chamber of Commerce. I have investigated in some of these coal companies, namely, the Crown Coal and Coke Company. The letter which you show me I received through the mails.

MR. GARRECHT.—We offer it in evidence.

PLAINTIFF'S EXHIBIT "121" admitted.

I cannot say whether the attached paper was a part of that letter or whether I received it later.

MR. GARRECHT.—We now offer in evidence the letter of August 24th, '06.

PLAINTIFF'S EXHIBIT "122" admitted.

After hearing the letter read, I think this is the copy referred to and think I could say positively that is the copy referred to, and think I could say positively that that is the letter referred to.

MR. GARRECHT.—We now offer this as a part of that.

MR. WILLIAMS.—To which we object for the same reasons as the letter.

THE COURT.—The same ruling.

The document attached to EXHIBIT "122" admitted.

MR. GARRECHT.—Q. Now, Mr. Ballentine, how many shares of stock did you purchase in the Crown Coal & Coke Company?

MR. WILLIAMS.—May I ask the witness a question?

THE COURT.—Yes.

EXAMINATION ON VOIR DIRE by Mr. Williams:

Q.—Your purchase in this company was in the syndicate, that is, you were one of the syndicate that took over the property?

A.—Yes.

Q.—And that was the question of your purchase, was it?

A.—Yes.

A.—I understood that this was to be a syndicate and at that time I had not purchased my shares. I was to be allowed 50,000 shares of stock for \$1500.00 and was afterwards allowed 7,500 shares additional

of the treasury stock and received those shares after the company was organized. That is, we got a certificate for 50,000 shares and that certificate was recorded for some reason that I cannot say just now and another certificate for 50,000 shares was issued to us, and that certificate was sent out here to be put in escrow in the Bank of Montreal and was to be held for two years. My stock remained in the Bank of Montreal for probably three years. I received the 7,500 additional shares after the meeting of 1910.

PLAINTIFF'S EXHIBITS "123" and "124" being pages 17 and 19 of the stockholders' minute book of the Crown Coal & Coke Company admitted in evidence without objection.

On CROSS EXAMINATION by Mr. Williams he testified as follows:

I am acquainted with Mr. Ferrell and am a very close friend of his and indirectly am engaged in business with him.

(Witness excused.)

H. S. HOUSE, recalled on behalf of the Government, on direct examination by Mr. Garrecht testified as follows:

I have made an examination of the books of the Crown Coal & Coke Company for the purpose of ascertaining the number of shares of stock disposed of by the Crown Coal & Coke Company.

MR. GARRECHT.—Q. How many shares were disposed of?

A.—There were 585,911 shares of treasury stock that was sold and there was 150,000 shares of treasury stock that was exchanged for 2000 shares of Crows Nest & Northern Railway stock, making a total of 735,911 shares that were disposed of.

MR. GARRECHT.—Q. Have you made an examination of the books of the International Development Company for the purpose of ascertaining the number of shares of Crown Coal & Coke Company stock that was disposed of by the International Development Company prior to January 1, 1912?

A.—Yes, sir.

MR. GARRECHT.—Q. How many shares were disposed of?

A.—They sold 1,240,658 shares for which the Crown Coal & Coke Company received \$206,036.00. That is for the entire sales of treasury stock. The International Development Company received from the sale of Crown Coal & Coke Company stock that was owned by them, \$398,682.52.

The minute book of the Crown Coal & Coke Company, page 21, admitted as PLAINTIFF'S EXHIBIT "125".

Pages 39, 40, 41, 42, & 43, of the minute book of the Crow's Nest & Northern Railway Company admitted

in evidence without objection as PLAINTIFF'S EXHIBIT "126".

Page 49 of the minute book of the Crow's Nest & Northern Railway Company admitted without objection as PLAINTIFF'S EXHIBIT "127".

MR. GARRECHT.—We now offer page 24 of the minute book of the International Development Company dated January 3, 1910.

The names of the officers read as follows:

R. G. Belden, President; James A. Williams, Vice President; A. E. Wayland, Secretary-Treasurer; of the International Development Company.

I have made an examination of the books to ascertain whether the 120,400 shares of Crown stock referred to in the Crow's Nest & Northern Railway minute book, page 49, was disposed of and have also made a computation showing the amount that was realized by the Crow's Nest & Northern Railway from the sale of this stock, which is \$60,200.00. I have also made a correct tabulation from the books of the corporation showing the date, pages and other details pertaining to this transaction.

This stock was sold through the International Development Company and I have made a computation showing the amount realized by the International Development Company from the sale of this 120,400 shares of Crown stock. The International Development Company received \$94,971.00.

MR. GARRECHT.—Have you made a computation to ascertain the rate of percentage of commissions that was realized by the International Development Company for the sale of the Crown stock?

A.—Yes, sir; Yes, sir, I have.

MR. GARRECHT.—Can you tell what disposition was made by the Crow's Nest & Northern Railway Company of the \$60,200.00 that it received from the International Development Company on account of the sale of the 120,400 shares of stock you have testified about?

A.—Yes, sir. \$50,000.00 of the \$60,200.00 that was received by the Crow's Nest & Northern Railway from the sale of these 120,400 shares was turned over to the Crown Coal & Coke Company in payment of an additional 100,000 shares of treasury stock. I have made a computation to show the rate or percent realized by the International Development Company from the sale of the stock that has been referred to.

MR. GARRECHT.—Q. What was the rate?

MR. WILLIAMS.—To which I have objected as incompetent, irrelevant and immaterial and not within any issue.

THE COURT.—He may answer.

(Defendants except and exception allowed.)

A.—A little better than thirty-six and a half per cent.

On CROSS EXAMINATION by Mr. Williams the witness testified as follows:

My age is pretty near thirty-two years. I am the officer of the Government who had charge of making the investigation before the indictment was returned here. I was engaged in that investigation from the 17th of April, 1913, until the 1st of October—that is, I was gone for about two months and a half and came back and stayed perhaps three or four weeks and was gone again and then came back and continued on it probably nine months altogether. During that time my work was nearly entirely confined to the office of these defendants. They voluntarily turned over to me everything in their office to go through and check over if I desired. The figures that I have given with reference to the stock of Crows Nest & Northern start from November 1st, 1910, in accordance with that resolution that was passed by the Crows Nest. There have been previous sales out of this trustee stock of 29,600 shares. During the summer and early fall of 1910 Mr. Belden and Mr. Wayland sold a large quantity of stock down around the Walla Walla district and perhaps over in Payette, but none of the proceeds that was derived from these sales went to the Crows Nest & Northern Railway Company. Messrs. Belden and Wayland or the International Development Company received up to the time of the completion of the organization of the Michel Coal Mines, Limited, for the two coal locations that were turned in by them, one million shares of the Michel

Coal Mines stock. The stock that went to the others, with the exception of this list that I have here, this stock was afterwards sold by the International Development Company, this list here, was all disposed of and something realized by the International Development Company from the sale of it.

MR. WILLIAMS.—I want to know how much stock they received upon this incorporation being completed?

A.—As I say, the entire million shares come to them and they disposed of it as they saw fit.

MR. WILLIAMS.—Q. You know at least, Mr. House, that out of that million shares that you were talking about one hundred thousand shares of it went to Butterfield?

A.—Yes, sir, for which he paid \$250.00.

O.—5000 shares went to LaFrance?

A.-Yes, sir.

Q.-25,000 shares went to Dr. Byrne?

A.—This register does not show that Dr. Byrne ever owned any stock.

Q.—I am referring now to the minutes that are introduced here, Exhibit "13"?

A.—The minutes authorize them to be issued but there is no regular certificate issued to Dr. Byrne.

Q.-25,000 shares to O'Brien?

A.—No regular certificate issued for that.

Q.—100,000 shares to T. J. Penn?

A.—Yes, sir.

Q.-5,000 shares to E. A. Martin?

A.—Yes, sir.

Q.-10,000 shares to Baptiste Lamereaux?

A.—Yes, sir.

Q.—9,000 shares to Dwyer?

A.—Yes, sir.

Q.—100,000 shares to Hemphill?

A.—Only 25,000 of that issued to Mr. Hemphill, that is, regular certificate. There might have been an advance certificate issued for the entire amount, but the regular certificate was 25,000 shares.

Q.—Was there any issued directly to the International Development Company?

A.—As the International Development Company received the entire million shares and then disposed of it as they saw fit—

Q.—(Interrupting) But did they ever get a certificate for the entire million?

A.—No, sir.

Q.—It was issued to these other parties, these different parties?

A.—Yes, sir, but the records of the International

show that there was something received from the International for all the certificates except that list that I showed you there.

Q.—That is, something before the incorporation of the company.

A.—Yes, sir.

- Q.—The stock ledger that is in evidence here, the only amount it shows the International ever received of the stock was 335,536 shares?
- A.—Yes, sir, but that entry was made January 31st, 1907. During the year 1906 they had sold a large amount of stock that was not deducted from their million shares—just the balance they had left.
- Q.—And there was this Penn stock and these other stocks that I have referred to?
  - A.—Yes, and a great many others.
- Q.—Isn't it a fact that what has happened is you are referring to the question of the amount of sales that they had made, 936,532 shares, you have included in that all of the stock that these people got in the organization of the company; isn't that a fact?

A.—Yes, sir.

- Q.—You have included in there the stock that Belden, Wayland, and the International Development Company purchased since the organization of the company and then sold?
  - A.—If they took the stock back.

Q.—Can you answer the question yes or no?

A.—Well, yes, but if they took the stock, if they made a deal—

MR. WILLIAMS.—I don't think the witness has a right to make an argument.

THE WITNESS.—I am explaining how I arrived at those figures, is all. If they made a sale of stock for, we will say fifteen cents a share, 5,000 shares and took a note for \$750.00 and then they cancelled that sale and gave back the man his note, I have taken that out as not being a sale; but if some man had bought stock and made part of the payments on the stock and then has become dissatisfied and turned the stock in and then they have resold the stock, I have included that in as two sales. I have included in that everything that they may have sold, where they may have got the stock by going out into the market.

Q.—You mean in order to protect the Michel market?

A.—I don't know anything about protecting the market. I have included everything in there that they have purchased. For instance, they took over some stock from the treasury. If they sold that stock at the same price that they paid for the treasury, I have not included that in my figures; but if they sold it for more than they paid, I have included the difference between what they paid and what they got in my total.

- Q.—Notwithstanding that the difference would only have been the commission?
- A.—No, it would have been more than the commission.
- Q.—I say it would be notwithstanding that might be the case?
- A.—It was not the case. I have deducted from my total sales the entire total of the stock that was turned over from the treasury. Maybe they would take over 25,000 shares of stock fro mthe treasury. That would be issued to them and charged to their account on the Michel books. Then the International Company would give the Michel Coal Mines credit for the entire amount of this stock. Then at various times they would either advance money to the Michel Company to offset this or they would turn over notes. Now, perhaps that certificate that was issued to the International Development Company would be held by them for six or eight months or perhaps even longer and then they would proceed to sell the stock that was issued on this certificate. Now, I can't tell just where their treasury sales begin and where they end, unless you call the sales from these particular certificates treasury sales, which were made perhaps six or eight months later.
- Q.—Well, how would you treat these transactions, as personal or treasury?
  - A.—Anything that was transferred from a certificate

that belonged to the International Development Company and did not come from the treasury, I have considered that personal stock.

Q.—In cases where these certificates had been delivered by the Michel Company and later accounted for by the Development Company?

A.—Yes.

Q.—You have treated it as personal stock?

A.—Oh, no, you misunderstand me. Any certificate that was transferred from the treasury of the Michel to the International Development Company and then sales made out, that certificate I have treated as sales of treasury stock; but anything that was transferred to the International Development Company from other sources and sales made out of these certificates, I have treated these as personal sales.

Q.—Now, the fact is that the books show that a total ownership, stock ownership in the Michel, leaving out the question of any stock in the organization of the company, that their holdings in the Michel have remained practically the same through all of these years?

A.—No, sir.

Q.—Has there been very much decrease in the amount?

A.—Here on January 8th, 1911, Government's Ex-

hibit No. "20", page 10, states that they owned certificate No. 307, for 335,536 shares.

- Q.—And this \$28,138.75 received which you say the treasurer received from the sale of stock, that is the net amount, is it, after deducting the commissions?
  - A.—No, sir, that is the gross amount.
- Q.—And the amount out of which the commissions are paid?
  - A.—Yes, sir.
- Q.—These commissions that are spoken of, were generally on account of sales all through the district?
- A.—Well, the Michel Coal Mines authorized the payment of a twenty percent commission to the fiscal agent, which was the Inland Surety Company, and afterwards the International Development Company.
- Q.—You spoke something about the International Development Company having received \$85,699.24 on account of sales?
  - A.—Yes, sir.
  - Q.—You are not referring to cash, are you?
  - A.—No, sir, that is its entire receipts.
- Q.—The fact of it is that the great bulk of it was either equities of some nature or kind or where there were trades or notes which have not been paid?
  - A.—There was twenty-seven thousand dollars of

that amount that was cash. They got in addition \$45,338.80 real estate and they got \$20,415.99 notes.

- Q.—You also found from that investigagtion and in checking these figures that the International Development Company was carrying the Michel during these years—I mean advancing their own money to pay their payrolls and things like that?
- A.—I found that during the year 1905 and '06, that was while they were selling this 120,000 shares of treasury stock at five cents, they advanced to the Michel Coal Mines \$3461.85; that during the year 1907 they disposed of about 70,000 shares treasury stock for them during that year and that they advanced them \$2216.00 in cash; and during the year 1908 they advanced \$865.64 in cash. In 1909 I didn't find any advance of cash. In 1910 \$216.50; 1911, \$28.96.
- Q.—A general question now directed to all of them: You found the fact was that the International Development Company's cash account was continually overdrawn through all of those years—I mean with the bank, so far as they had any money?
  - A.—They had some money borrowed from the bank.
- Q.—Well, you found that in general that was the condition, did you not?
- A.—No, I found where they spent quite a bit of money in promoting the White Canyon Copper Com-

pany down in Utah, and also the Utah Land Company.

- Q.—They did spend a little money outside of these companies?
- A.—Yes, they did, and they drew down quite a bit of money each year for their personal expenses.
- Q.—In other words during this period on an average, taking it on an average all told for expenses and everything else Belden drew all told, and that is all that he has ever got, something in the neighborhood of six thousand dollars a year, covering his expenses through the field, everything like that, and Wayland something in the neighborhood of four thousand dollars, just roughly?
- A.—That is about right; yes, sir; that is from the International Development Company.
- Q.—Well, any salary that may have been paid by any of these corporations to Belden and Wayland went in the International Development Company, did it not?
- A.—Yes, sir, that became an asset of the International Development Company.

(Whereupon an adjournment was taken until 2 o'clock P. M. March 27, 1914, at which time the trial was resumed and the following proceedings were had):

H. S. HOUSE resumed the stand and on cross examination by Mr. Williams testified as follows:

After the incorporation of the Crown the International Development and Belden and Wayland had on the 2nd day of January, 1907, 300,000 shares standing in their own name and 100,000 in the name of W. A. Hemphill, 50,000 in the name of L. Whitney and a pro rata of about 70,000 shares of the promoters' stock of 150,000 shares, making in all about 525,000 shares; and in addition to that they later on disposed of 100,000 shares that was issued in the name of Stephen Brown. Now, how they came in possession of that I do not know, but the stock that stood in their name or was controlled by them was about 525,000 shares. I think Mr. Hemphill had 25,000 shares of Crown stock when he wtihdrew from the International Development Company. At the time I made this report, on January 1st, 1912, there were 228,766 shares standing in the name of the International Development Company, 80,500 shares in the name of Mr. Belden, and 80,000 shares in the name of Mr. Wav land, and 10,000 shares in the name of Mr. Belden's wife. There would be a difference there of about a hundred thousand shares but in addition to this they have purchased from the syndicate holders quite a large amount of stock. They purchased a great deal more Crown stock than they did Michel. There was some stock that I remember of that was issued for labor on the property up there. There was no real estate in these transactions at all and about \$125,000.00 in notes and about \$75,000.00 in cash, the way I remember it. The figures that I have given in regard to the Crown sales included both cash and not sales and there was about \$125,000.00 of those sales note sales. In other words, there was \$74,592.35 in cash, \$124,311.75 in notes, and \$5,575.25 that is charged up for labor and salaries. The rest of it is charged to various accounts. I do not know how much has been realized from the notes. Very little had been paid on the notes up to January 1st, 1912.

Of the sales of the Michel stock that I charged to the International Development Company there was fifty thousand went to Butterfield on some kind of an arrangement and forty-five thousand went to Alboucq for which he paid something, taken back by the International Development Company; fifteen thousand went to Hart in lieu of commissions.

On REDIRECT EXAMINATION by Mr. Garrecht he testified as follows:

Mr. Belden drew six thousand and Mr. Wayland four thousand a year from the International Development Company and in addition to that they got two dividends.

Pages 30 and 39 of the International Development Company minute book read in evidence, also page 37.

I have made an examination to ascertain the amount of Crown stock disposed of between June 1st, 1910, and November 1st, 1910, and find that 254,817 shares

were disposed of, the proceeds of the sale having gone to the International Development Company. None of the proceeds went to the treasury of the Crows Nest & Northern Railway Company.

MR. GARRECHT.—Q. Now, in one of the questions counsel asked you if it was not a fact that the defendant traded real estate for stock put on the market in competition with these companies. Do the books show how much they acquired?

A.—Yes, they took over from the R. G. Belden Company 1000 shares of stock that they paid R. G. Belden Company—that is, they gave them credit on the International books, for one hundred dollars; then they took over 13,430 shares from the R. G. Belden Company for which they gave R. G. Belden Company credit for \$250.00; then they took over from J. P. Penn 5500 shares of Michel stock that was in part payment of fifteen shares of Crows Nest & Northern Railway stock; then they purchased 1000 shares from J. L. Ford for which they paid him \$12.25 cash and then they took over from Helen LaFrance 5000 shares in—then they secured from L. Albaugh 45,000 shares of stock; then they took over 10,000 shares of Michel stock from Dave Still in exchange for other stock; then they took over some more stock from the treasury. It is impossible to tell just what stock they owned on January 1st, 1912, or just where it came from. They were buying this stock and selling it all the time. Where they got the exact amount which they had on January 1, 1912, I can't say. None

of this 1912 stock came back from notes that were given and not paid.

The minute book of the Crown Coal & Coke Company, page 54, admitted as PLAINTIFF'S EXHIBIT "128".

MR. GARRECHT.—I offer page 25 of the Empire minute book, 56 of the Michel minute book, and Crown minute book, pages 38, 50, 66, 73, 117, and 126.

PLAINTIFF'S EXHIBITS "129" to "137" inclusive admitted.

MR. GARRECHT.—We offer the International Development Company minute book pages 25, 26 & 27.

MR. WILLIAMS.—To pages 25 and 26 we object as incompetent, irrelevant and immaterial and not within any of the issues of this case.

THE COURT.—I don't think it is very material. They may be admitted.

(Defendants except and exception allowed.)

PLAINTIFF'S EXHIBITS "138", "139" and "140" admitted.

On RECROSS EXAMINATION he testified as follows on the examination by Mr. Williams:

The dividend referred too on page 70 of the International Development Company, I ascertained was paid by checking through the books, that is, they

turned over to the individuals certain of this coal stock that the corporation held and certain of the notes that they had taken for the stock sales. They traded the notes off for Crown, Michel and Mills stock, and out of this transaction there was no question of money coming to them. The next dividend referred to on page 38 was simply shifting the stock from the corporation in to the individual names. The British Columbia Investment Company stock is the same, that is, really Crown stock. The Mills Syndicate coal mines stock was some coal stock in the same situation, right there (indicating), and that was shifting that. As far as cash coming to them out of that I do not know. They might have sold it after they got it in dividends. I don't know. The same is true of the real estate. I do not know anything about the Riparia Orchard tract valued in that dividend at \$45,000.00. Neither do I know in regard to the Pleasant Farms interest. I merely take their values that they put on the stuff. The stock that they sold betwen July 1st, 1910, and November 1st, 1910, 254,817 shares, was personal stock, that is, that was the Crown stock that was owned by the International Development Company. I have been unable to find that the Crows Nest & Northern Railway Company was keeping any books at that time. It is not a fact that the sale of stock that I have just referred to was for the Crows Nest & Northern and was passed immediately to them. Iam sure that none of the proceeds out of this sale went to either the Crown Company or the Crow's Nest & Northern. There were note sales, real estate sales and some cash sales. There was 20,000 shares of stock that was sold and then that was sold to Mr. Hopson for \$7,500.00 in cash. None of the proceeds of this went either to the Crown or the Crow's Nest & Northern, to neither one of these companies. The item that I have referred to of \$7,500.00 of Mr. Hopson is not a part of a note of Mr. Hopsons.

(Witness excused.)

MR. GARRECHT.—We offer Sections 3, 7, and 12 of the articles of incorporation of the Empire.

The articles admitted as PLAINTIFF'S EX-HIBITS "141", "142" and "143".

License No. 2621 admitted without objection as PLAINTIFF'S EXHIBIT "144", and License 2622 as PLAINTIFF'S EXHIBIT "145".

C. A. BRYAN, recalled as a witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is C. A. Bryan and I live at Prosser, Washington. At one time I sold stock in the Empire Coal & Coke Company as agent, for the International Development Company. As agent for the International Development Company, in selling Empire Coal Company stock I distributed this prospectus.

MR. GARRECHT.—We wish to offer it all in evidence and read only a part of it.

MR. WILLIAMS.—May I ask a question.

THE COURT.—Yes.

On EXAMINATION ON VOIR DIRE by Mr. Williams the witness testified as follows:

Q.—Mr. Bryan, who prepared the draft for this prospectus?

A.—That was prepared by—that is a part of it by myself and part by Mr. Wayland, and it was finished in Spokane.

Q.—And isn't it a fact that this was prepared entirely, a draft of it by yourself and Mr. Vincent and sent to Spokane?

A.—I don't think Mr. Vincent had anything to do with it.

Q.—You think not?

A.—No, sir.

Q.—Was it sent in typewritten or in longhand?

A.—Longhand, I think.

Prospectus admitted as PLAINTIFF'S EXHIBIT "146".

I received the letter which you show me, at the post office in Freewater, which was my post office address. I received it through the mails.

MR. GARRECHT.—I offer it in evidence.

The letter admitted in evidence as PLAINTIFF'S EXHIBIT "147".

It was about the first of September, 1909, that I entered the employ of the International Development Company. My duties were to sell stock in the Empire Coal & Coke Company. The only instructions that I received was simply repeating the statement that I heard made in the sale of stock, that is, statements made by Mr. Belden. His statements were that these properties no doubt contained the same veins of coal which were opened on the adjoining property, which was the Crown Coal & Coke Company, and that it was expected to be developed as shipping coal within a year from that time; that the railroad was chartered, the surveys made, the right of way cut, the right of way secured and it would be built in time to handle the output of the Empire Mine. In making sales of the Empire stock, some of the stock of the Crows Nest & Northern Railway was disposed of. The statements that I have just made were statements that were made by Mr. Belden at the time that we were making sales. We were working together at that time and these statements were made by him in that work, simply repeated; they were repeated by myself in many cases in his presence. I offered one share of railroad stock. He stated that the British Columbia government was such that it would not permit it to be short; that the full one hundred dollars had o go into the treasury of the company, that is, the treasury of the Crows Nest & Northern Railway Company. Later on I sold stock

in other companies. The letter which you show me I got through the mails at the post office.

MR. GARRECHT.—I now offer that in evidence.

The letter admitted in evidence as PLAINTIFF'S EXHIBIT "148".

MR. GARRECHT.—I now offer this letter in evidence.

The letter admitted in evidence and marked PLAINTIFF'S EXHIBIT "149"

MR. GARRECHT.—Q. I will ask you how you got that letter?

A.—Through the mails.

MR. GARRECHT.—I offer it in evidence.

Letter admitted in evidence as PLAINTIFF'S EXHIBIT "150".

MR. GARRECHT.—Q. Now, state under what circumstances was Crown stock to be used as bait?

A.—Well, it was conceded that the Crown was the most—

THE COURT.—The letter speaks for itself, unless he had some further conversation with the defendants.

Q.—Did you have any instructions from the defendants when you were to use the Crown stock, aside from the letters introduced in evidence?

- A.—I can't recall just what the instructions were, more than that letter.
  - Q.-Were you an officer?
  - A.—Yes, I think I was a director in 1909.
- Q.—Do you know who gave the instructions what was to be done on the property?
- A.—These instructions were given practically by Mr. Belden. Mr. Belden engineered the work through.

(Cross examination had later.)

LNKE FAIRES, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is Luke Faires and I live at Port Angelas, Washington. I was at one time employed by the defendants Belden and Wayland, in 1909. My duties were those of stock salesman and I sold stock in the Mills Syndicate, the Empīre and the Crown. I was given instructions as to what representations were to be made to purchasers of the Empire, by the defendants. They were to be in fact that the Empire was incorporated for a million and a half shares.

- Q.—Did they say anything about the coal?
- A.—Why, stated that the same veins practically laid under the Empire that laid under the Crown, as the property laid adjoining it, and the property looked to be as valuable as the Crown property only there

were not as many veins exposed on the Empire property.

The first million shares was to be sold at four cents a share to raise forty thousand dollars to pay off an option on the property. It was property adjoining the Crown property. They stated that the same veins practically laid under the Empire that laid under the Crown. We expected to raise some money by the sale of fifteen or twenty cent stock; we sold some stock, treasury stock to develop the property and then we expected to put the property in shape in eighteen months or two years, that is in shape for shipping.

Q.—Did you ever sell any stock after making these representations?

A.—Yes, sir.

Q.—Was there ever anything said about disposing of stock in the Crow's Nest & Northern Railway Company with any of this stock?

A.—Yes, sir. With every five hundred dollar purchase they was to receive one share of railroad stock par value of one hundred dollars, and the money was to go to the railroad company for the development of the railroad. I sold some stock as personal stock and other stock was sold as treasury stock. We sold both personal and treasury stock practically at the same time. Treasury stock was for the development of the property, and I do not know whether the certificates were issued from personal stock or treasury stock,

some real estate was taken in. Mr. Belden and Wayland represented that we could raise money on the real estate to develop the property; if we had to we could borrow money on the real estate. The deeds were most of them to Mr. Belden. He stated that doing that he would not have to call a meeting of the directors when he wanted to dispose of the property to get money to develop the properties with, raise money for the properties. I was one of the incorporators I think of the Empire. I had been working for the company. It was suggested to me by Mr. Belden. I had no monetary interest in the company. I understand that the right of way had been secured by the Crow's Nest & Northern Railway Company.

Q.—Did you sell any other stock in any company besides the Empire?

A.—Yes, sir.

Q.—When did you sell the Crown stock, were there any distinctions made between the Empire and Crown, as to which you were to sell; one or the other?

A.—Yes, to sell the Crown stock after I sold the Empire stock. There was times when I sold Empire and Crown together.

Q.—Under what conditions were you to sell Crown with the Empire stock?

A.—Well, they would rather have stockholders that was connected with one company own interest in the

other company, and I acquired stock in the Crown and Empire.

Q.—What did you give in payment?

A.—Commissions.

On CROSS EXAMINATION by Mr. Williams he testified as follows:

I reside at Port Angelas and at present I represent wholesale houses up in that north territory. I do not think I was a stockholder of the company at the time I was elected director. I cannot recall the directors by name now, all of them. I was acquainted with Mr. Vinson and Mr. C. A. Bryan, C. J. D. Knox, and J. B. Hartman, and W. J. Gorman and A. J. Poteet. I also knew Miss Covington who was acting as secretary. The instructions I received from Mr. Belden and Mr. Wayland was if possible with anyone thinking of buying, to get them to go up and look at the property. Practically every note that was given contained a provision something as follows: "The maker promises to visit the property within a certain number of months from this time and if he is not satisfied the notes will be surrendered." Something like that. I had instructions to endorse that on the notes. So far as possible I endeavored to induce them to go up and look over the situation fully, and did take up numerous people for that purpose. I was to receive twenty per cent commission and I think one fourth of that was taken out for expenses of the International Development Company. If Belden or Wayland were working with me they took out their expenses, but if they were not working with me they didn't get any part of my commission at all. I have turned over to the Government all the letters that I received from Belden or Wayland. I do not have a letter from them bearing date July 12th, 1909.

MR. WILLIAMS.—Have you that letter?

A.—My letters or instructions—I have no letters to turn over to them.

I did receive some letters from Belden and Wayland. I received the letter which you show me a copy of, dated July 12th, 1909, and it was signed by one of these parties, Mr. Belden, if I remember right.

The letter admitted in evidence and marked DE-FENDANTS' EXHIBIT "151".

I had made sales before the receipt of that letter. I followed those instructions about making no misrepresentations. I did not represent that I was selling personal stock as treasury stock. I took the parties that were taken to these properties from time to time all over the property and showed them everything about it and what the companies were doing, and showed them the lay ofthe ground. There was a tunnel being driven, I am referring to the Empire property. Mr. Bell had charge of the work at that time. That was under the charge of Mr. Bell at that time. I would take the investors into the tunnel to show them what we were working at. I did not at any time

represent to them that this was proven coal ground. I remember receiving a letter like the one you show me.

MR. WILLIAMS.—I offer in evidence the letterin question that came from the International Development Company.

The leter admitted in evidence without objection marked DEFENDANTS' EXHIBIT "152".

I knew when I was selling this stock that they were not going to get the proceeds from the sale of the personal stock and give the money to the company. I have made some trades or sales of treasury stock for real estate but I cannot locate just exactly the deal. I would swear that I did not make a trade of treasury stock for real estate. The representations that were made by Belden and Wayland to me were as to the size of the corporation, and that it adjoined the Crown property, and that Belden thought that the same veins were underlying the Empire as were under the Crown, and to him the property looked to be as valuable, acre for acre, as the Crown. He told me that he thought they would be able to operate in eighteen months or two years or before but that it depended upon their being able to get the railroad in. They couldn't develop the property until they got the railroad in. Besides this letter, there were statements made to us at various times by Mr. Belden in reference to one share of railroad stock being given for every five hundred dollars worth of shares of Empire; and that was the statement I was making to investors, that I would

give them one share of railroad stock with the purchase.

I received the original of this letter which you hand me.

The letter admitted in evidence and marked DE-FENDANTS' EXHIBIT "153".

I also received this letter which you show me.

The letter admitted in evidence and marked DE-FENDANTS' EXHIBIT "154".

About the same time as receiving Exhibit 154 1 also received a letter something like this which you now show me.

The letter admitted without objection marked DE-FENDANTS' EXHIBIT "155".

I also remember seeing a letter something like that.

Letter admitted in evidence marked DEFEND-ANTS' EXHIBIT "156".

On REDIRECT EXAMINATION by Mr. Garrecht he testified as follows:

I also received a letter like that to which Mr. Belyden's name was signed.

MR. GARRECHT.—I offer it in evidence.

MR. WILLIAMS.—I object to it as incompetent, irrelevant and immaterial.

THE COURT.—It will be admitted.

(Defendants except and exception allowed.)

Letter admitted in evidence and marked PLAINT-IFF'S EXHIBIT "157".

MR. GARRECHT.—Q. Was any amount of the five hundred dollars that was received for the Empire stock and the railway stock together, was it to go to the Railway Company?

A.—One hundred dollars.

(Witness excused.)

ADA J. GILES, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is Ada J. Giles, and I live in Spokane. I did not at any time during the month of July, 1908, make any location of a mining claim in British Columbia, but I did know of one having been located in my name, having been told about it by Mr. Belden.

MR. GARRECHT.—Q. What did you receive, if anything, for the making of this location?

A.—Five hundred shares of stock in the Michel,—no, I guess it was in the Mills Syndicate instead of the Michel.

Q.—Did you receive any money?

A.—No, sir.

(Witness excused without cross examination.)

MRS. JOHN GILL, called and sworn as a witness

on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is Mrs. John Gill, and before I was married it was Alice Cope. I did not at any time in July, 1908, locate a mining claim in British Columbia. I cannot remember when I first found out that a location had been made.

MR. GARRECHT.—Q. What did you receive for the use of your name?

A.—I received five hundred shares of the Mills Syndicate coal.

Q.—Did you get any money?

A.—No, sir.

(Witness excused without cross examination.)

BAPTISTE LAMEREAUX, recalled on cross examination by Mr. Williams, testified as follows:

I have some of the letters I received from Belden and Wayland lately, but do not think I have any I received in 1909. I did, however, receive letters from them during that time. I cannot fix the time when Wayland was up there and told me not to say anything about where the lines was.

I received a letter something like the one you have just read me.

Letter admitted in evidence and marked DEFEND-ANTS' EXHIBIT "158".

I showed the lines correctly to Mr. Dimmick. The

time that I talked with Mr. Wayland was after the receipt of this letter and at that time I though I knew where the lines of the Empire were. Mr. Dimmick is the one who started the work on the property, and he started it after I had pointed out the lines to him, in response to this letter.

(Witness excused.)

H. S. HOUSE, recalled as a witness on behalf of the Government, on direct examination by Mr. Garrecht testified as follows:

I have made an examination of the books of the Empire Coal & Coke Company and the International Development Company for the specific purpose of ascertaining the number of shares of Crows Nest & Northern Railway stock that was purchased by the Empire Coal & Coke Company. I find that they purchased ninety-seven shares from the International Development Company for which they paid \$9,700.00. My examination does not disclose that the one hundred dollars or any portion of the one hundred dollars for each share of stock went into the treasury of the Crows Nest & Northern Railway Company. I have also made an examination of the books of the Empire Coal & Coke Company for the purpose of ascertaining the number of shares of treasury stock that were disposed of prior to January 1st, 1912, and find the same to be 175.021. I have also made an examination of the books of the International Development Company for the purpose of ascertaining the number of shares

of Empire Coal & Coke Company's stock that the International Development disposed of prior to January 1st, 1912, of their personal stock and find the same to be 1,377,036 shares. The Empire Coal & Coke Company received from the sale of the 175,021 shares of treasury stock \$43,896.65. The International Development Company received from the sale of the 1,377,036 shares of personal stock in the Empire Coal & Coke Company \$163,479.78.

On CROSS EXAMINATION by Mr. Williams he testified as follows:

MR. WILLIAMS.—Q. Mr. House, upon the organization of the Empire is it not a fact that the only stock retained by the International Development Company, Mr. Belden and Mr. Wayland was 128,005 shares in the International Development Company's name?

A.—25,000 in Mr. Belden's name and 25,000 in Mr. Wayland's name. This certificate that was in the name of J. B. DuVall for 100,000 shares was disposed of by the International Development Company at a later date. I was unable to find where they ever paid Mr. DuVall anything for that or where Mr. DuVall paid them anything for the 100,000; but at later dates there were transfers from this certificate and the proceeds of those sales came into the International Development Company, that is all the books show, that was standing in their name at the time of the organization of the Empire Coal & Coke Company, and at

that time was all the stock they owned on the books, in their names. Prior to that they had sold approximately—

- Q.—(Interrupting) I am not referring to prior to the incorporation. That was the stock, prior to the incorporation, that was the stock that was divided between the incorporators, or the organizers?
- A.—I wouldn't say the incorporators, no, the organization I would call the same as the incorporation; it was the custom of Mr. Belden and Mr. Wayland to sell stock along in the latter part of 1908 and the early part of 1909 and give a receipt for so many shares or stock, give a receipt for so many shares of stock in a corporation to be organized.

Whereupon an adjournment was taken until April 28th, 1914, and thereafter court duly convened; present as before.

- H. S. HOUSE resumed the stand and on cross examination being resumed by Mr. Williams, testified as follows:
- Q.—And this question of personal sales that you have referred to that Belden and Wayland made the commissions, were paid out of that, were they?

A.—Yes, sir.

Q.—Commission of twenty percent or twenty-five or what?

A.—Commission on the Crown?

Q.-No, I am referring to the Empire!

A.—They paid a commission of twenty-five percent oon the Empire and I think at the very beginning they paid a commission of thirty percent. They paid a commission of twenty percent on the Crown and twenty percent on the Michel, and then later on I think they paid twenty-five percent on the Michel. There were some made through the agents, on which there was no commission paid; they never closed the sales; the one that I am thinking of specifically was where they traded some Empire and Crown stock to Mr. Brainerd down in Payette for some land. The Journal says it is a J. B. Gorton sale. I was not able to find where any commission was paid on that sale; that is the only one I have in mind right now.

Q.—So, assuming for the sake of the argument that in these different sales that they realized these figures that you spoke of, the commissions that they paid came out of them?

A.—Yes, they paid their own commissions or paid their agents a commission out of that.

Q.—Now, in reference to this Empire, these sales of Empire that you refer to which you say shows that they realized \$163,479.78, you know as a matter of fact that there was very little in cash realized on that, don't you?

- A.—About thirty-nine thousand dollars in cash, all told.
- Q.—Now, on the question of treasury stock, as I understand you to say the agents in the field were getting all of the commissions?
- A.—All of the commissions—yes, the agents in the Empire sales, for instance, the agents got twenty-five percent commission and the company got only twenty percent; that is, the International Development Company only got twenty percent from the Empire.
  - Q.—That is a loss of five percent?
- A.—Yes, on treasury sales it was a loss of five percent.
- Q.—In other words, the only commission that was allowed by the Empire was twenty percent while they paid the agents twenty-five percent.
  - A.—Yes, I never could figure out just why they were
- Q.—Now, with reference to these railroad shares wileling to do that, but that is a fact. that you say were purchased by the Empire, I believe you say the International Development Company received \$9,700.00 for them?
  - A.—Yes, sir.
- Q.—The fact is, Mr. House, that of these 97 shares that you referred to 93 of them were shares of railway stock that were given before the Empire was incorporated?

A.—Something like that, these railroad shares were all got after the railroad was incorporated. My records show the date of the certificates of the railway stock. It shows practically all of these certificates were issued after the incorporation of the Empire Company. My records here, Mr. Williams, show that there were fifty-four of these certificates that were issued, given with stock that was purchased at fifteen and twenty-five cents. Now, the rest of that was given out with stock that was purchased at four cents, if that is the stock that you mean, prior to the organization of the company. The entire ninety-seven shares was purchased by the Empire after the organization of the Empire Company.

On REDIRECT EXAMINATION by Mr. Garrecht, he testified as follows:

Q.—Mr. House, how much of the organization, or rather the one million shares of stock that went to the International Development Company from the Empire stock stood in the name of the International Development Company or either of these defendants on the first of January, 1912?

A.—On January 1st, 1912, there was 32,564 shares that stood in the name of the International Development Company. There was no stock in Mr. Wayland's name at that time and there was 17,900 shares standing in Mr. Belden's name. That would make about 50,500 shares.

MR. GARRECHT .-- Now, Mr. House, for the

stock that was issued, the shares of stock that was issued to the people whose names were on the list that was turned over at the time the transfer was made of the claim, to the various companies by the International Development Company, with the request that stock be issued to these different individuals, did anything of value go to the treasury of the corporation for these shares?

A.—Of what corporation? There was nothing of value went into the treasury of the Empire Coal & Coke Company The proceeds from the sale all came into the International Development Company

RECROSS EXAMINATION by Mr. Williams:

Q.—The stock of the corporation, that is, the stock of the corporation was paid for by that transaction?

A.—Yes, by turning over two coal leases for this property up there.

(Witness excused.)

WILLIAM C. HOPSON, called and sworn as a witness for the Government, on direct examination by Mr. Garrecht testified as follows:

My name is W. C. Hopson and I live near Milton, Oregon, where I have a fruit ranch. At one time I bought Empire stock and Crown stock. I talked with Mr. Belden before I bought the Empire stock but I never talked to Mr. Wayland until after I bought the Empire stock. I talked to both of them before I bought the Crown stock. These conversations con-

cerned the properties. Mr. Belden said, when he was trying to get me to buy the Empire stock, that they held—some parties held an option or owned the Empire and they held an option on the Empire. We was to buy the stock in the Empire and take up that option that they held on the Empire and buy the properties, and the property was represented—we were buying the stock to pay for the Empire property and it was—we always understood we were getting the title to the Empire property. We wasn't buying out leases or anything of the kind; we were buying the property outright, as to the value of the property, he said that the timber on the property was worth the amount we were paying for it and with each five hundred dollars worth of stock we took we were to get a share in the railroad company, and that was to go towards building the railroad, so we could have transportation facilities to get the coal out, when we got to mining. I bought \$250.00 worth of stock the first time and \$500.00 the second time an dgave my notes and paid the notes.

The \$250.00 was to go towards buying the option that they held and the \$500.00 was to go towards developing the property and putting it in working order, except \$100.00 was to go into the railroad fund. That was to be paid into the railroad in cash, and of course I understood—. The one hundred dollars was to be paid in cash to the railroad company as the Canadian Government had control of all railroad properties and for every—all the money that went

to the railroad had to be turned in in cash and could not be spent except under the supervision of the Canadian Government.

Q.-Where did you see Mr. Wayland?

A.—I don't remember that I saw Mr. Wayland until the meeting in Freewater, in the winter of 1909-10.

Q.—Well, did he say anything about this property?

A.—Yes, sir; he had several maps and made a long talk on the value of the property and the way-he called it a geological talk and the maps on the wall, he showed how the Crown mountain had dipped, or the Empire had dipped down or had broke off from the Crown, and by going in on the Empire how he would strike the veins of coal that had broken off from the Crown mountain into the Empire and there was no question about the coal being there; and Mr. Belden also stated that there was no question about the coal being in the Empire. He said one of the engineers said the coal in the Empire-well, this was about the way he said—he asked the engineer as a matter of information to find out what the engineer would say, "What do you think of the coal in the Empire property," and the engineer answered "Any damed fool would know that there was coal in the Empire." Mr. Wayland's talk was to carry out these statements that Mr. Belden made, showing that the geological formation of the land and the properties there was such that there couldn't be any question

but what the statements were true; and he also had a blue print of the railroad and the right of way. I suppose it must have been eight or ten feet long possibly, up on the wall, showing how they would build the railroad and the grade and there would not be much expense about fixing up the road and building it and that there was timber enough on the right of way and clearing the right of way to furnish ties and possibly enough for bridge timbers for what few bridges there would be; there would not be many bridges, but what few there would be. The blue print showed the right of way and that there was slashing on it. I can't say the exact words, but he had the blue print up there and says, "This is our right of way" and told all about what was necessary to build the road and what the grade would be and always talked about "our" railroad. The first time I bought two thousand shares of Crown, and the next time three thousand and the next time five thousand, and I paid between \$4000.00 and \$4250.00.

Q. Did you get any railroad stock?

A.—Yes, sir, one share.

On CROSS EXAMINATION by Mr. Williams he testified as follows:

The conversation which I have referred to at this meeting, at which Belden and Wayland was present, the meeting was held in Vinson's officee in Freewater. I think at that time Vinson was president of the company and lived in Freewater. I don't remember as to

all of the trustees resided in that vicinity or not at that time. So far as I can remember Mr. Vinson is the only one. At the meeting to which I refer there was probably twenty people in attendance, which included stockholders of the Empire and at that time there was also a very few who were stockholders in the Crown.

I am the same W. C. Hopson who was appointed one of an auditing committee to audit the books of the Empire but we did not audit or go over them because Mr. Belden said they were not in shape at that time to be audited so it ran along indefinitely and it was finally dropped. That is, he told us that the books had not been brought up or something of that kind. Some way, he was not ready just at that time to have them audited. I was never a director or trustee of this company.

(Witness excused.)

C. A. BRYAN, recalled for cross examination by Mr. Williams, testified as follows:

In reference to Exhibit "146", the proof for this prospectus, as I said yesterday it was prepared in Mr. Vinson's office at Freewater by myself and Mr. Wayland, and it was sent in to the Spokane office and compiled. I do not know if there was anything done in the Spokane office except to have it printed and I do not know whether there were any changes made in it at all. I know that the International Development Company's name never appeared in connection

with this booklet except as fiscal agent. Mr. Vinson did not help to prepare it.

I received the letter which you now show me.

The letter identified by the witness admitted as DEFENDANTS' EXHIBIT "159", and another letter admitted in evidence without objection as DEFENDANTS' EXHIBIT "160".

The Mr. Evans referred to in Exhibit 160 is the man that the people at Freewater sent up to investigate the property for them.

The circular letter admitted in evidence without objection as DEFENDANTS' EXHIBIT "161".

Another letter admitted without objection as DE-FENDANTS' EXHIBIT "162".

Another letteer admitted in evidence without objection as DEFENDANTS' EXHIBIT "163", and another also admitted in evidence as DEFENDANTS' EXHIBIT "164".

MR. WILLIAMS.—The letter of June 16th, that you refer to there, is that this letter that is marked Defendants' Exhibit 161?

A.—Yes.

Whereupon DEFENDANTS' EXHIBITS "165" to "174" inclusive, were admitted without objection and upon redirect examination PLAINTIFF'S EX-

HIBITS "175" to "178" were admitted without objection.

(Witness excused.)

H. S. HOUSE, recalled on behalf of the Government, on direct examination by Mr. Garrecht testified as follows:

I have examined the books of the various companies for the specific purpose of ascertaining who owned the certificates the stock which was purchased by Mr. Hopson was transferred and found that all the Empire stock that Mr. Hopson purchased was transferred from certificates that were owned by the International Development Company and that the proceeds of that stock did not go into the treasury of the Empire Company. Of the Crown stock that he bought, there was 2000 shares of that that was transferred from a certificate that had been previously taken over from the treasury of the Crown Company at twenty cents a share. The Crown Company got the benefit of about \$400.00 out of that transaction. The rest of the Crown stock that Mr. Hopson purchased was transferred from certificates that were owned by the International Development Company.

In reference to the railroad stock acquired by him, none of the proceeds went into the treasury of the railroad company but went to the International Development Company.

(Witness excused.)

JOHN S. VINSON, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is John S. Vinson and I live at Milton, Oregon, but my post office address is Freewater. I was president of the Empire Company during 1910, I think, and a part of 1909 possibly, and had acquired my stock from Mr. Belden prior to that time. Mr. Belden said that the Empire property was a very valuable property; it was valuable for coal and for timber. I bought 25,000 shares and paid four cents a share, paid one thousand dollars for it.

MR. GARRECHT.—Q. How did you pay the amount, in notes?

A.—In checking on the bank, cash.

Q.—Now, just state what representations were made to you by Mr. Belden concerning this property and what was to be done with your money, if he said anything about that?

A.—He said that they had an option on 1240 acres of coal lands; that they were to pay forty thousand dollars for that option, and the time was about up when they should make good; and they were selling this stock at four cents per share until they raised that forty thousand dollars and then it would immediately increase in value as the property was adjoining the Crown property and was easily—was of equal value to the Crown and had cuts to show the veins of coal in

the Crown and that these veins extended through the Empire.

I was shown samples of coal and we sent a man up there along with Belden to show him the property before we bought. He showed him the property and he brought down two sacks of coal that they said they got off the Empire, Mr. Belden said that. He also said that they had a railroad franchise by an act of parliament, that the road was surveyed and was very valuable, probably more valuable than the coal, or of equal value, and it was a good investment—that the stock was a good investment. In regard to these various coal companies getting together, he said that they operated separately at the present time but expected to consolidate all the companies at some future time.

While I was president I simply signed the checks, that is all, and presided at a meeting or two.

MR. GARRECHT.—Q. Who did have the management of it, if you know?

A.—Mr. Belden and Mr. Wayland. I did not have anything to do with getting out the pamphlet on the Empire. I got two shares of railroad stock and they said in regagrd to it that there was one hundred dollars for each share that had to go into the treasury of the railroad, in money; they had to put that into the railroad, that the railroad was incorporated in Canada and the Empire was incorporated in Washington, and that the railroad was valuable property and that would be the first thing—would have to complete the railroad,

and they had ties enough on the ground and on the right of way for building the railroad. The said they had the right of way, they owned the railroad right of way, they had an act of parliament that gave them the right. There might have been a few proxies made out in my name to represent people at some meeting, I believe there was.

On CROSS EXAMINATION by Mr. Williams he testified as follows:

He said that they had an act of parliament giving them power to build a railroad, I understood that they owned it; he said that they had the right of way. I was on the property once in 1909, after I purchased my stock. While there I looked over the entire situation as well as I could. I went over what they said was the Empire. There was no work whatever being done there at that time; they had not started yet. There had not been any tunneling done on the Empire. We sent Mr. Evans up to look at the property before I bought and I don't know whether any one told me whether there had been any tunneling done or not. Mr. Belden told me that this coal which was brought down came from the Empire but did not tell me exactly on what part of the Empire it was obtained. I do not remember that he told me that they had found any veins on the Empire. I think what they said was that it was simply some float coal that was picked up on it.

MR. WILLIAMS.—Q. Didn't tell you though

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that there was any coal in place that had been discovered by them?

A.—They claimed that there was coal property.

The witness identified and it was admitted without objection, a letter marked DEFENDANTS' EXHIBIT "179". The witness identified as having received a letter marked DEFENDANTS' EXHIBIT "180" admitted without objection.

MR. WILLIAMS.—Q. Now, with reference to this stock that you purchased, you knew at that time that that stock was not purchased for the company, that is, it was not going into the treasury, the purchase price?

A.—The first piece that I bought from Mr. Belden was to apply on this option.

Q.—I say, did they ever interfere with anything you ever tried to do as a board?

A.—I think possibly they have. In the election of officers, they simply controlled the whole matter. My understanding all the time is that they had proxies at all these meetings and elected the board of directors.

Q.—When you spoke of Belden and Wayland having the management, just what do you mean, Mr. Vinson?

A.—Simply that there was nothing done without they did it. Nothing all the time.

- Q.—Neither Belden or Wayland were trustees at any of these times, were they?
- A.—They held the voting stock. The majority of the board voted with them all the time.
  - Q.—They were not on the board of directors?
- A.—I wouldn't say for certain. I would not trust my memory to say that they were not.
- Q.—They did not interfere with the board doing whatever they wanted to, did they?
- A.—Not worth while for anyone to try to do anything.
  - Q.—Did you send your proxy to them?
- A.—Yes, sir. They did not control me in sending in their proxies.

On REDIRECT EXAMINATION he testified that Belden & Wayland sent out these blank copies to every man they knew of, and also sent out blank powers of attorney.

On RECROSS EXAMINATION witness identified a letter which was marked DEFENDANTS' EXHIBIT 181, and afterwards another letter identified by the witness was admitted in evidence and marked "182".

(Witness excused.)

JOHN NIEDERER, a witness called on behalf

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of the plaintiff, being first duly sworn, testified as follows:

## DIRECT EXAMINATION by Mr. Garrecht:

My name is John Niederer, I live at Summerville, Oregon, am a farmer. I have stock in the Crown and Empire.

Q.—Before you purchased stock did you have any talk with either Mr. Belden or Mr. Wayland?

A.—No, sir, not the first lot.

Q.—Well, did you purchase any stock after having a talk with them at any time?

A.—Yes, sir.

Q.—Well, state what was said to you about these properties, did you talk to both of them?

A.—First I talked with Mr. Hopson, I think, A. Hopson. The first talk I had with Mr. Belden was when he came down in January, 1911. He called a meeting at our school house, Dry Creek school house.

A.—There is where he explained about the properties. He stated that he came down there with the intention of raising some money for to put in a railroad to these properties, to the Crown property. He said everything was already then but the railroad for to go to work and take out coal; said there was lots of coal in sight, you might say in both the Empire and the Crown. The Empire was a little harder to get at.

They were working on a tunnel, they had four hundred feet of tunnel built towards the Empire.

Q.—Now, after that did you buy any more stock?

A.—Yes, sir, I did. I bought five hundred dollars worth, gave a note for five hundred dollars, and paid it.

Q.—I show you a letter, Spokane, Washington, January 18th, to you, John Niederer, Summerville, Oregon, signed International Development Company, per R. G. Belden. I will ask you to state how you got that letter?

A.—Through the mail.

MR. GARRECHT.—I offer it in evidence.

The letter admiteed in evidence without objection and marked PLAINTIFF'S EXHIBIT "183", and was read in full to the jury.

MR. GARRECHT.—Q. Did you get your note back or did you take up stock?

A.—I took up some more stock.

Q.—or the same notes that you permitted them to hold?

A.—Yes, I couldn't say how many shares for sure; I got part of the Crown and part of the Empire.

MR. GARRECHT.—Take the witness.

CROSS EXAMINATION by Mr. Williams:

I made my first purchase of Empire the last of

December, 1910, and in the Crown the same date. Mr. Belden was in our section the 7th or 8th of January, 1911. The first time I saw Mr. Belden was sometime after I purchased stock. When I talked to Mr. Belden a lot of the neighbors were present. Mr. Mat Sanderson was one. A. Hopson was with Mr. Belden, and was there when this conversation was had, and heard what took place.

WHEREUPON an adjournment was taken until 2:00 o'clock P. M. and court thereafter duly convened, present as before.

He stated that he had some coal stock to sell, and by making us understand he put up a chart on the wall at the school house. All the statements that were made by Belden were made at that meeting. He explained about the tests of the coal, what it tested, and about the size of the vein. In reference to the Empire as to what Mr. Hower had told him in reference to the coal being there, Mr. Hower said it was a part of the Crown mountain; it broke in two and slid down; it was principally the same vein as on the Crown. His statement was that the west side of the Empire had dropped down, and these coal veins in the Empire would be struck by running a tunnel into the mountain, while on the Crown the veins were exposed to the break.

Leo R. Niederer is my son and lives in my home.

Q.—Look at this letter and state whether that was written at your suggestion?

- A.—Yes, sir, I instructed my son to write it.
- Q.—Did you sign it after it was written?
- A.—Yes, I had it written about the date it bears.

MR. WILLIAMS.—I offer this letter in evidence.

THE COURT.—Read the letter.

The letter admitted in evidence and marked DE-FENDANTS' EXHIBIT "184" and read to the jury.

REDIRECT EXAMINATION by Mr. Garrecht:

- Q.—Did you pay this note again the second time?
- A.—Yes, sir.
- Q.—Do you know how much you paid altogether to the International Development Company?
  - A.—Pretty close to fifteen hundred dollars.

(Witness excused.)

WALTER J. WOOD, recalled on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION by Mr. Garrecht.

- Q.—Mr. Wood, in which of these coal companies did you have stock?
- A.—I had in the three of them, the Crown, the Empire and the Michel.
- Q.—Now, before you bought your stock did you have any talk with either Mr. Belden or Mr. Wayland?

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A.—Yes, sir.

Q.—Did they make any statement about these properties which induced you to buy?

A.—Yes, sir.

Q.—Well, state what was said by them?

A.—I went to the property with Mr. Wayland. He showed me the property at Crows Nest, beginning at the Canadian Pacific Railway. We followed up the creek, he showed me the right of way of the railroad.

MR. GARRECHT.—Q. What did he say about that?

A.—He said they owned seventeen acres on the Canadian Pacific Railroad for yard ground.

THE COURT.—What did he say about the right of way question?

A.—He showed me the right of way, where the road was to be built; showed me one place where they had cleared some timber off, another place where they were to cross the Michel claim, and we followed the general course of the right of way on the property, and then after getting to the Crown property, we rode over the Crown mountain, and on into the Empire property, that was represented to be into the Empire property, showed me veins of coal that were opened up on the Crown and the tunnel in the Empire.

MR. GARRECHT.—Well, where did you buy your stock?

- A.—I bought it in the International Development Company's office except one thousand shares of Empire I had bought before I went to look at the property.
- Q.—Well, was anything said either way when you bought your first stock, by either of the defendants, or at the time you purchased the stock at the International Development Company's office in Spokane, about what would be done with the money?
- A.—It would be used for developing the property. They represented to me that they had sufficient funds to build the railroad, but there was other improvements that would have to be made to put the property in shipping condition.
- Q.—Well, did they say what was to be done with your money?
  - A.—Why, it was to be used for this development.
  - Q.—Which ones?
  - A.—Well, building of the Tipple for one thing.
  - Q.—What did you give for the stock that you got?
- A.—Well, the one thousand shares of Empire that I purchased before going on to the property, I paid cash for, and the balance I gave notes for.
  - Q.—Did you give any farm lands?
- A.—No, sir, but they were to take farm land providing the land suited them. They came to look at it and turned it down.

Q.—Was there any understanding about that at the time the note was given?

A.—Yes, sir; they were to take the land if it was as I presented it.

Q.—I show you a letter dated Spokane, Washington, January 21, 1911, Mr. Walter J. Wood, Waitsburg, Washington, signed International Development Company, by A. E. Wayland, I will ask you, Mr. Wood, how did you get that letter?

A.—I got it through the mails.

MR. GARRECHT.—I offer this letter in evidence.

MR. WILLIAMS.—To this offer we object as incompetent, irrelevant and immaterial, as to each of the defendants; and make that as to both defendants, jointly and separately.

MR. GARRECHT.—That is the letter set forth in the indictment.

THE COURT.—It will be admitted.

The letter admitted in evidence and marked

PLAINTIFF'S EXHIBIT "185" and read to the jury.

MR. GARRECHT.—Q. Mr. Wood, to whom were the notes made out that you gave at the time you purchased the stock?

A.-To R. G. Belden.

Q.—Did he say anything about that?

A.—Well, before signing the notes I asked him why they were made to him and he said they were selling the stock on a commission basis, that is the International Development Company was selling it on a commission basis and he was president of the company, and he took all notes in his name and they afterwards settled with the separate companies.

MR. GARRECHT.—I now offer the Empire minute book, pages 29 and 30, to show the passage of this resolution and wish to read it.

The minute book admitted in evidence and marked PLAIN'TIFF'S EXHIBIT "186".

## CROSS EXAMINATION by Mr. Williams:

It was sometime in October, 1910, I visited the properties. Mr. Still and Mr. Wayland went with me. I made trip from Crow's Nest and back to Crow's Nest the same day. Went over the Empire where the cabins were, and over the Crown. Examined the coal formations on the Crown and went into the Empire tunnel, and examined the formation in the tunnel. Bought this stock the following day after I returned to Spokane at the office of the Company. Mr. Belden, Wayland and Mr. Still, and Mr. Livingston was there part of the time. He, (Belden) said that they had the necessary funds and security for building railroad. He told me he had made arrangements with the Bank of Montreal to use these notes as collateral, to borrow money; said that he had estimate on what railroad would cost. When I was up there the right of way had been partially cleared. It was what we term a slashing, the timber was mostly laying there on the ground; it was slashed for perhaps two hundred yards. They were to start work as soon as they could get in there the following spring. Belden said the proceeds from the sale of these notes was to be used for the building of the Tipple, equipping the mine to ship. He said they was selling the stock for the purpose of getting the funds to build these, and he was selling this stock for that particular purpose.

Q.—Is that your signature, Mr. Wood?

A.—Yes, sir. I signed that the date that I bought the stock but that last clause wasn't on there when I signed it. I know it wasn't because we talked about the stock. We had been talking about the development of the property and I know enough to know if I was buying his personal stock it would not help the company. I know I wouldn't have signed it if it had been there; I read it over.

MR. WILLIAMS.—I offer in evidence the receipt.

MR. GARRECHT.—No objection with the explanation.

The receipt admitted in evidence and marked DEFENDANTS' EXHIBIT "187" and read to the jury.

MR. WILLIAMS.—Mr. Wood, suit was brought against you on these notes, was it not?

A.—Yes, sir, and I set up this same defense that it was represented to me it was treasury stock. Case came on for trial at Walla Walla. I never appeared against them; I discharged my attorney and let them take judgment. The case was set and I was in Walla Walla to try the case at that time.

## REDIRECT EXAMINATION by Mr. Garrecht:

Well, I wasn't financially able to go further. I told Mr. Reynolds to go down and notify the court I had withdrawn my defense and I owe my attorneys yet for the work they did do.

(Witness excused.)

H. S. HOUSE, recalled on direct examination by Mr. Garrecht, testified as follows:

I have examined the books of the Crown, Michel, and Empire to ascertain where the stock purchased by Mr. Woods was transferred from, and find that all the Crown stock purchased by Mr. Woods was transferred from the certificates that were owned by the International Development Company; and also the Empire.

(Witness excused.)

E. C. S. BRAINERD, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is E. S. C. Brainerd and I live at Payette, Idaho, and I put in most of my time looking after my

own interests. I never personally acquired any interest in any of these coal companies but a corporation of which I am a stockholder and director and secretary acquired some stock in the Empire and Crown. I had conversations with either Mr. Belden or Mr. Wayland in reference to these properties after I purchased the stock. They gave me an option on 20,000 shares of Empire and 10,000 shares of Crown, agreed to pay my expenses if I would go up and look over the property. The option carried also the agreement that I might exchange part of the Empire for Crown later on if I desired to. I made a trip over to the property. I came to Spokane and spent part of one day in the office and went from there with Mr. Wayland over to the property. We went from Crows Nest horseback. As we go out where we left the Canadian Pacific line he commenced to show me the right of way of the Crows Nest & Northern Railway and showed me the clearing that had been done and work done on the right of way. We went over what he called the Crown Mountain and came down into the valley where the camp was. I went into the tunnel that was being dug by their foreman, Mr. Bell, looked that over and after I got back home we then closed up the deal where we got the stock; and later on we exchanged the Empire stock for Crown, according to the option. I went over the mountain with Mr. Wayland. He showed me where we left the railroad, where the right of way commenced and told me they had acquired the right of way. I had that understanding of the matter. We had some little discussion

I think about how the money had been expended on this right of way and I think I asked him two or three times when we would come to a piece of work that was done on the right of way, I would ask if there wasn't more work than that done. Mr. Wayland said that to get their charter from the British Columbia government it was necessary to report the amount of work that had actually been done so as to comply with their law. In other words my understanding was that they had made a showing of having spent more money than was actually spent.

On CROSS EXAMINATION by Mr. Williams he testified as follows:

As I understood it this was for the purpose of misleading the British government. In other words my understanding was that the company's funds were such that they were trying to get as good a showing before the British Government as possible for the money they expended. I am an accountant myself and have been a banker. I am a director on the loan and finance and auditing committee of the Bank in Payette and I have been secretary of the Crown but do not believe I have ever been an officer of the Empire. I was secretary of the Crown a little over a year, and the records of the company would be the best evidence as to the time. I can't recall exactly now. While I was secretary I did not have control of the books; they were in the office of the International Development Company and were not under my control and direction. During that time I think Mr. Belden was one

of the directors. I do not think that when I went into office as secretary that Belden and Wayland practically relinquished any kind of control over the company. I went in with Mr. Butterfield under that kind of an arrangement but it did not bring about the result. I always had the books whenever I went to the office and asked for them. There was considerable discussion at one time about removing the books from Spokane but on account of Mr. Butterfield and myself not having control of the books we were not able to do what we wanted to. Mr. Butterfield and I desired them ing control of the books, we were not able to do what removed.

On REDIRECT EXAMINATION by Mr. Garrecht he testified as follows:

I gave land for my stock and the title, at the request of Mr. Wayland, went to B. G. Belden, as I remember, and I asked him why and he said that was Mr. Belden's father, and that they had an arrangement with the bank—he said that was Mr. Belden's father and I asked him how deeding the land to Mr. Belden's father would promote the properties and open them up, and I couldn't see where the company was getting any benefit out of it. He replied that Mr. Belden's father was in very close touch with the Bank of Montreal and had an arrangement whereby they could mortgage the land nearly to its full value and that the money went to develop the property.

On RECROSS EXAMINATION by Mr. Williams he testified as follows:

My recollection is that the deed was made direct to B. G. Belden and not to R. G. Belden. I am quite sure it was explained that the reason for doing this was because his father was in close touch with the Bank of Montreal. That conversation took place in my office in Payette and I have a distinct recollection of it. To this day I have never questioned the trade that I made with Belden and Wayland. While I was secretary of the company I did not do much of the work; I was simply a figure head. I worked possibly five days on the Kootenay books. I only investigated the railroad incorporation so far as the act of the British Columbia Government which granted the franchise is concerned.

(Witness excused.)

JAMES W. MUIR, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht testified as follows:

My name is James W. Muir and I live at Salem, Oregon. I was an investor in the Crown, Empire and Michel. I had a talk with Mr. Belden concerning the second batch of stock in the Empire. I went to his office, was at his office in Milton; he came to me and told me that he would like for me to purchase a little of this stock, get enough stock for to take a railroad share. I told him I didn't feel able to buy any more stock; that I didn't have the cash and he

said it didn't matter, if I wanted to increase my holdings, that he would take my note. I think that was on Saturday, and I told him I didn't think I would buy any more stock unless I would confer with my wife first; and we set a date when he was to come down to my place on Monday, Monday at two o'clock, I believe, and so he came down and talked about a couple of hours and told me all about the mine and he had maps there showing the structures of the vein, Crown property. He told me that he thought it would be possibly as good as the Crown. After that I told him I would talk to my wife about it. So after they left I intended to go up the next day, but I went up that evening, the same evening, Monday evening and I came into the office and he says, "Well, I didn't hardly expect to see you so soon." I told him that I had somthing up my sleeve all the time was the reason I couldn't let him know about buying the stock then, and I told him my proposition, that Mr. Evans had told me, Mr. Evans offered to me stock, 1000 shares for one hundred dollars in three years time without interest. Mr. Belden's proposition was that I could have the stock for two years without interest. So I told him that I had seen Mr. Evans as I came into town and I told him I would take his stock. Mr. Evans was just going to supper; he told me that he would issue me the stock. I told Mr. Belden what I had done; I told him I concluded I would take the stock of Mr. Evans, so Mr. Belden picked up his chair he was sitting some distance from me, possibly twelve or fifteen feet, he picked up his chair and came

and sat down right in front of me and told me then, he says, "Mr. Evans' stock is bought and paid for and the money expended," he says, on the property. "Now," he says, "you buy that," he says, "and it wouldn't help the property a bit," he says. "If you take my stock the money will go to develop the property and it will be to your interest to take my stock." He talked for sometime, I can't relate all the conversation but the sum and substance was that I told him that I was with him; he convinced me that I was wrong in taking stock that had already been bought and paid for and the money expended, and I told him I would take it if it was all right with Mr. Evans. Mr. Evans came in about that time and I told him what I had done and he said it was all right, so I gave my note for three hundred dollars for the stock. I got some railroad shares with my stock. He told me at the time I was taking the last bunch to make up the 500—I had already bought 200, gave my note for it—that he held my note for, the first purchase—I told him that I would take the other 300 to make it 500 so I would get a railroad share; and when they issued the stock they sent me the railroad share with it but I do not think he told me at that time anything about what would be done with the money. It was said in my presence at one of their meetings that a railroad share possibly would be worth by the time this work would be done—that possibly the railroad share would be worth all of the money we would have to pay for the stock, that is, \$500.00. I don't recall anything being said by either Belden or Wayland about where

the money was to go that was paid for the railroad stock. I have not paid the company any money but gave them notes amounting to five hundred dollars, and fiften acres of land of the value of \$225.00 an acre, but I do not know what value they put it in at.

On CROSS EXAMINATION by Mr. Williams he testified as follows:

Of this fifteen acres there was about twelve acres in cultivation, which I farmed afterwards for several years. I leased it from Mr. Belden.

(Witness excused.)

H. S. HOUSE, recalled on direct examination by Mr. Garrecht, testified as follows:

I have examined the books of the various companies for the purpose of ascertaining who owned the certificate from which the share of stock in the railroad, which was delivered to Mr. Muir, was issued from and find that that together with the other stock that he received was all transferred from certificates that belonged to the International Development Company, and none of the proceeds went into the treasury of the Crown, Empire, Mitchel or Crows Nest & Northern Railway Company. The books of the International Development Company show that the land was transferred to R. G. Belden on November 18, 1912, as part payment of his dividend.

(Witness excused without cross examination.

MARGARET J. ALDEN, called and sworn as a

witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is Margaret J. Alden and I live at Payette, Idaho. I had stock in the Empire and the Crown. I have talked with both Mr. Belden and Mr. Wayland with reference to these properties. They said it was a very good investment, and they didn't know which mine was the best; they thought one was just as good as the other. They were referring to the Crown and the Empire. He said the stock in these companies was raising in value and had raised in value. When they were first on the market they were four cents a share and when we bought they were twenty-five cents a share—that is, the Empire was twenty-five cents a share and the other was seventy-five cents. He said something about his having stock in them himself.

- MR. GARRECHT.—Q. Did he tell you how much he valued his stock at?

A.—Well, when Mr. Belden was at our house the last time when I bought shares he said he wouldn't take five dollars a share or his stock, and they expected to have the railroad completed by September 1st, 1911, that he thought it was a wonderful investment and would bring in a dividend by 1912, January 1st. They didn't tell me the exact amount, that night, but they said it would be more than we could possibly use. I told him at that time we were old folks and we needed everything we had, and that we were not able to go into it anyway, and he said that it wouldn't

be but a little time until we would get a dividend. We gave in exchange for the stock in the Empire Mine a lot which we valued at two thousand dollars and we gave cash for the other stock, sixty-five cents a share. I purchased at that time 1000 shares and I gave two lots in Caldwell. Besides this I gave Mr. Belden a note for \$150.00. He said it was an impossibility for the small stockholders to be frozen out; the stock was incorporated in British Columbia and he said the Canadians wouldn't stand of any such work as that.

On CROSS EXAMINATION by Mr. Williams she testified as follows:

I think this purchase was made about June 10th, 1911, the first one and the next was December, about the 12th of December-I am mistaken-the first purchase was made in July, about July 10th, 1910, and the following-the Crown purchase was made December 12th, 1910. Before I made the purchase I attended a meeting of some of the stockholders in my section. That meeting was held at Payette, Idaho; there were not many there, possibly fifty people. It was held in the Commercial Club building. I think Mr. Brainerd at one time was there. My attention was not called to Mr. Butterfield and I do not think he was there. There were quite a few of my neighbors there. I remember at the first part of the meeting hearing Mr. Elmer Bell talk. Mr. Bell and Mr. Brainerd, who were not my immediate neighbors, said they had been up to see the property. Neither my husband nor myself investigated the property at all. The first purchase was the time I gave this two thousand dollar lot that I referred to. The lot was improved and not mortgaged. The other two lots I spoke of were Caldwell property, and I do not think they were improved.

On REDIRECT EXAMINATION by Mr. Garrecht, she testified as follows:

I do not know if Mr. Belden said anything about what was to be done with the property that was received for the shares but he said the purpose of their selling stock was to develop the mines. He said that there was a company that was after the mine and if the stockholders would all turn in and buy more stock, why they would get more money for to develop the mine, and they would not have to let anyone else in.

On RECROSS EXAMINATION by Mr. Williams she testified:

He said that at the meeting o December 10th, 1910, I understood at that meeting that there was money at that time in the treasury, \$130,000.00, for the building of that railroad there. I cannot tell you whether at that meeting there was any discussion in regard to a bond issue. There was so much said at that meeting I cannot tell you what was said and cannot tell you whether at that time the language of that cablegram sent by Mr. Butterfield from Paris was read or not.

MR. WILLIAMS.—Q. Wasn't it recited in that telegram that the amount of money to be raised by these bonds was something in the neighborhood of a million dollars—I can't give you the exact amount—

and that the company would have to pay a certain percentage in order to get the money and a certain commission in order to get the money, and didn't the stockholders there at that time vote on the question of whether they would bond the property or wouldn't bond it?

- A.—Yes, they did; because they all went in, they all went in equally and spoke for stock.
- Q.—That is, they decided that instead of paying upon this bond issue which had been offered to them, they would buy more stock and try to build the railroad themselves, is that it?
- A.—Well, at that time I tell you they said that the money was already in the treasury for the railroad.
- Q.—Then why were they going on an investigation for money then, if it was already in the treasury?
- A.—Well, it was to develop the mine. I don't know in what way. I cannot remember of the cablegram having been read at that time.

(Witness excused.)

H. S. HOUSE, recalled on direct examination by Mr. Garrecht, testified as follows:

I have examined the books of the Crown and Empire Companies to ascertain from what source the stock purchased by Mr. Alden came and find that the Crown and Empire stock was all transferred from certificates that were owned by the International Development Company and none of the proceeds went

into the treasuries of either the Empire or the Crown.

(Witness excused.)

C. A. BURCH, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is C. A. Burch and I live at Waitsburg, Washington. I purchased some shares in the Crown, the Empire and Michel, and have had a talk with Mr. Belden relative to these properties. I gave my note for 500 shares in the Crown and he told me they would be shipping coal by October 1st, 1911, and that a two percent dividend would be paid on January 1st, 1912. I gave an additional note and was to have work when I went up to inspect the property. I wrote about the work and never got any answer. The note was to bear eight percent interest and he said the note would take care of itself, I would never have to pay it, is what he told me; said it would pay dividends and I was to work it out at the mines; part of it was to be paid to me and part of it applied on the note.

On CROSS EXAMINATION by Mr. Williams he testified:

I bought my stock in the Crown in January, 1911, and I traded my property in Waitsburg for the Empire and Michel in December, 1910. I bought 500 shares of Crown and gave my note for it, which I never paid. I believe they told me the mines were eleven miles from the railroad. They said ther was a railroad to the Crows Nest but none further on I did

not know that before they could be shipping the railroad would have to be built. This note and money were to go to build a railroad. Mr. Belden said that the note which I gave and the property were to be put up as collateral at the Bank of Montreal to secure money to build the railroad and secure mining equipment. The note that I referred to is a note for five hundred shares of Crown stock.

(Witness excused.)

CHARLES COOPER, called and sworn as a witness in behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is Charles Cooper and I live at Walla Walla. At one time I owned stock in the Michel, Crown & Empire Coal & Coke Company. I was at a meeting held by Belden and Wayland in Walla Walla in which they call the Ransom building. They represented these properties to be first class coal mines. They were telling about where they owned railroad right of way and a certain amount of money in the treasury; they had some man in Paris trying to negotiate a loan. After that I bought stock in the Crown Coal & Coke Company, the Michel and Empire. I put in a section of land I wanted it all in Crown and they were not willing to give me all of it in the Crown so I took one-third of the value in each.

MR. GARRECHT.—Q. Was there anything said about the land that was traded, about what was to be done with it?

MR. WILLIAMS.—I object to that as incompetent, irrelevant and immaterial and not within the issues in the case.

THE COURT.—Objection overruled.

(Defendants except and exception allowed.)

A.—Well, now, the deal was made through a real estate man and I just went there to sign the deed in the office. The deed was made out and I signed it, and Mr. Belden went around to my residence to have Mrs. Cooper sign the deed; and on our way there I asked him how he could develop the property with such truck as this, and he said, "We can borrow money on this."

Q.—Did he say anything about the Empire or Michel properties?

A.—Well, he didn't talk anything about the monly what I heard at this meeting that I spoke of previous.

Q.—Well, at the time that they wanted you to take one-third in each property did they say anything about their relative values?

A.—No, he said they couldn't give it all in the Crown; he wanted to take some Michel and some Empire stock with it, so I took equal value of each stock.

On CROSS EXAMINATION by Mr. Williams he testified as follows:

The agent that I referred to was Mr. L. G. Baird,

of Walla Walla, who was a general real estate agent.

Q.—How did it happen that you asked about what they were going to do with the land or could do with the land?

A.—Well, I just threw that out to find out whether it was his private stock or treasury stock; and the remark that he made led me to believe that it was treasury stock.

Q.—Did Mr. Baird represent you throughout this deal?

A.—Well, I had the property there in his name to sell and he spoke about his chance to make a trade.

Q.—Did he tell you what he had done in making the negotiations?

A.—Yes.

DEFENDANTS' EXHIBIT "188" marked for identification and DEFENDANTS' EXHIBIT "189" admitted without objection.

(Witness excused.)

ROBERT McBEATH YOUNG, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is Robert McBeath Young, and I live at Fernie, British Columbia. I am connected with the Crows Nest Pass Coal Company engaged in coal mining. I do not know where the Michel Coal Mines Limited is. I recognize the map which you show me.

Q.—What properties, as shown by the map there, belong to the company that you represent? Have you a letter from Mr. Wayland relative to a right of way across that property?

(The witness produces a letter.)

MR. GARRECHT.—I offer this in evidence.

MR. WILLIAMS.—No objection.

A letter admitted and marked PLAINTIFF'S EXHIBIT "190".

Another exhibit admitted and marked PLAINT-IFF'S EXHIBIT "191".

MR. GARRECHT.—Q. Now, Mr. Young, do you know whether at any time subsequent to the date of these letters, if the right of way was secured across that land?

A.—No arrangements have been made since that date.

Q.—What is your office with the company?

A.—Secretary and land commissioner.

Q.—Would that go through your office if there were such arrangements?

A.—Yes, sir.

Witness excused without cross examination.

A. B. TRITES, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is A. B. Trites, and I live at Fernie, British Columbia, and am engaged in the mercantile business. I know where the Crown Coal & Coke Company property is in the Crows Nest district. I am the owner of property close to it, the property known as the McInnis coal property.

- Q.—And it is also known as the Trites-Woods coal properties?
  - A.—Yes, Trites-Woods are the owners.
- Q.—I will ask you, Mr. Trites, if a survey was ever made across that land?
- A.—A survey has been made, stakes have been surveyed across the property.
  - Q.—Was a right of way ever secured?
- A.—It was never secured; no arrangement was ever made for the purchase of it.

(Witness excused.)

SAMUEL L. DUNLOP, called and sworn as a witness on behalf of the Government, testified as follows:

My name is Samuel L. Dunlop, and I live at Free-water, and my business is fruit farmer. I was a purchaser of stock in the Empire, Crown and Michel coal mines properties and have talked with Mr. Belden and Wayland with reference to these properties. I talked I believe with Mr. Belden and saw Mr. Wayland too. I purchased stock in the Empire

and Crown and paid twenty-five cents per share for the Empire, \$1500.00 altogether in cash. Mr. Belden said in relation to this property that the Michel Creek was the line between the Empire and the Crown, and pointed it out on a map which he laid down on the floor at my house. He said they were coal properties and he though that the Empire was the best at that time because it would be easier worked, because when the tunnel was in there the water would run out of it and the other one we would have to pump it out. I bought some Crown stock at a meeting that was held in Walla Walla and they had maps up on the wall showing what they were going to do and when they was going to have it in operation and all of this, and they wanted me to take some and I took 1000 shares, for which I paid seventy-five cents a share, in notes, for \$750.00, of which I paid one-half. When he was selling the Empire stock he said if we will take \$500.00 worth of the Empire you get a share of railroad, which is worth a hundred dollars, which was to be put into the railroad, to build the railroad. When I bought the Empire, he said he was working the Empire, he didn't say anything about the Crown, much but at another time he said if I wanted some Crown he would let me have some of his own stock if I wanted it.

On CROSS EXAMINATION by Mr. Williams he testified:

The meeting which I have testified about was held in the Ransom building in Walla Walla. There was

a good crowd there and the general condition of this property was explained. I do not remember who talked other than Mr. Belden and Mr. Wayland. I do not remember whether any other people made talks to the crowd: I never went up to see the property myself and never talked with Mr. Bowlus about the situation there. Mr. Hopson talked to me. I guess I talked with Mr. Vinson about what he found up there and also talked with Mr. Bryan but did not talk with Mr. Evans. He told me that he thought the Empire was the best because if the coal was there the water would drain out and could be worked more economically. I don't know as he said that the coal was covered nor do I know whether he said there were any outcroppings. I knew at that time that they were driving a tunnel.

On REDIRECT EXAMINATION by Mr. Garrecht, he testified:

He said that the money which I paid for the stock was to go to put the tunnel in and develop the property.

On RECROSS EXAMINATION by Mr. Williams he testified:

I bought six thousand shares of Empire at twenty-five cents a share. I don't remember whether it was right at that time that Belden told me I could have some Crown if I wanted it, or not, but I know I was talking with him and I was asking him about the Crown and he said there was none on the market.

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He said, "If you want it, why I will let you have some of mine." I don't know as he told me that the Crown had ceased the selling of treasury stock at that time, and I do not remember whether he explained to me why it was there was none on the market. It was when I bought the stock that I heard him say what was to be done with the proceeds. My wife and Mr. Bryan were present. I can't say just what words he said only he described the land and that he had a map and laid it down on the carpet. He said the money would be used to drive the tunnel and develop the mine. I don't know how he came to say that; said they was waiting to sell the stock to get the money to develop the mine. I don't remember him saying that down at the meeting there.

(Witness excused.)

J. A. HAYTON, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is J. A. Hayton, and I live at Palouse, Washington. I purchased some Empire stock from Belden and Wayland who were together at the time, in April, 1910, at my home in Walla Walla. They came there to sell me stock in a coal property, they said, that they owned in British Columbia, and they represented that it was a property that they had paid forty thousand dollars for and they also stated that the property had valuable timber on it; that the timber itself was worth the price that they paid for it;

and they showed me samples of coal and they said the coal didn't come off of the Empire but came off of an adjoining property. They did not claim that any coal had been found on the Empire. Mr. Belden was doing most of the talking and I asked him: "How do you know there is coal?" They represented that there was coal there of course and they claimed that the veins of coal that were on the adjoining property, the Crown, extended on to the Empire, but there had been none of them opened, they had never found any coal, and I asked him then if there was no openings on the Empire into the coal, no coal discovered. He said no, that there was coal on the Empire, and says, "Mr. Hayton, we know; we know what we are talking about; we have all of these lands experted and we know; we know there is coal there." I purchased 2000 shares at twenty-five cents a share and gave a note for it, which I afterwards paid. They said they were selling this stock because they were going to develop and operate the mine, build a railroad, but I didn't pay much attention about the railroad. The railroad stock was all sold at that time they said and there was no more—I think they were giving away railroad stock with these shares, but they claimed that was all gone so I didn't get any railroad stock; don't know anything about that. They were talking about shipping coal and said it would not be very long, within six months or a year, they would be shipping coal.

On CROSS EXAMINATION by Mr. Williams he testified as follows:

Q.—When you went up and examined the properties you were better pleased with the Crown than you were the Empire, isn't that the fact?

A.—Well, it came about in this way: Mr. Belden represented that they owned the Empire mine when he sold me the stock and when I went up there I went out looking over the property with a little Frenchman they called Baptiste and I went over Crown Mountain and looked at the Crown property with him. I think Belden and Wayland were there at the time and some others. When I went up there I found out that they didn't own the Empire property and I put it up to Mr. Belden that they didn't own the Empire mine or didn't pay forty thousand dollars for it, and then he said, "Mr. Hayton, if you are not satisfied with the Empire stock, why, just surrender some of that and take some of the Crown," and I said that was all right, and took some of the Crown. He says, "We will give you a special deal on this Crown right now; we have got some eastern stock," he says, "we can sell cheap; we have been selling it at forty," but he says, "If you surrender part of the Empire and take a thousand shares of Crown we will let you have it at thirty-seven and a half cents."

On REDIRECT EXAMINATION he testified as follows:

This conversation took place after I got back to

Spokane and this was the time that I told him he had not paid forty thousand dollars for the property.

(Witness excused.)

E. J. KIRK, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is E. J. Kirk, and I live in Oregon. I purchased some Empire stock from R. G. Belden. Before I bought it I had a conversation with him on or about the last of May, 1909. Mr. Belden came to my place with a Mr. Faires and they introduced themselves and asked to show some proposition, mining stock they had, and they asked if they could show their samples and we talked there in the house, in the sitting room; my wife was present, and they showed lots of samples and pointed the properties out on the map. They said that this Empire property was a continuation of the Crown, that they joined one another, and the same veins that was exposed there and showing on the map on the Crown continued on into the Empire and that the only reason that they were not visible that whenever the earth cooled off at the time of the eruption it contracted and the Empire fell down and the Crown raised up; that is why it exposed the Crown, and the Empire was not visible on that ac-I bought \$5,000.00 worth at four cents per share. He went on and told me that this was an option, that if I would buy this stock now that we would get in on the ground floor at four cents and

whenever we sold stock enough, to the amount of forty thousand dollars, we would buy this option and then they would incorporate and have a mine. They told me that every five hundred dollars of stock that was sold in the Empire, one hundred dollars went into the railroad company, Crows Nest & Northern, I believe the name was, and they gave me a one hundred dollar share and said that the one hundred dollars was to develop the railroad, for to build the railroad. They said they had the right of way all secured, work done on it, part of it; there was some grubbing and such work; it was all surveyed and they had the right of way secured. I also bought some of the stock in the Michel property and they stated that it was just as good as the other. I believe I bought a thousand shares of it at twenty cents a share, which I paid for in real estate; traded them a ranch for stock in the Michel and some in the Mills and some in the Crown. The Crown I believe I paid it was either forty or thirty seven and a half cents a share. The ranch was one I had in Walla Walla County and they just traded, they gave me 5000 shares in the Mill and 5000 shares in the Michel. The Michel was selling at twenty cents and the Empire at that time was four cents. They came back afterwards and said that they had bought the option of the Empire and now, if we would go in and buy some stock for development purposes, that there was no use in buying the option unless we bought stock for to develop it, the mine would be no good to us, and I took 500 more at fifteen cents a share; made in all one thousand dollars I put in the

Empire. I gave him two notes of one thousand dollars each and at the time I turned them over they were endorsed by R. G. Belden, "without recourse" and I asked him why they were endorsed without recourse and he said he had entered into a contract with the directors of the company for to do their business and that they gave him that power and authority and just as soon as he got these notes that he endorsed them and turned them back into the treasury; and I told him I didn't like to take a note endorsed without recourse; and he said, "I have got the Crown Coal & Coke Company at my back, which is worth several million" and I had no chance to talk. At the meeting in the Ransom Building I talked with Mr. Belden about the Crown property and I took quite a bit of stock; I took something over nine thousand at that time, and I asked him quite a few questions. I asked him how much promoters stock he had reserved for his own purposes and he said he didn't reserve any. he was on an equal footing with any other stockholder; any stock he got he had to pay for it; and any stock he got in the future he would have to pay for it the same as any other stockholder.

On CROSS EXAMINATION by Mr. Williams he testified:

I believe they told me I was an officer in some of these companies. I don't know whether I was or not. I never qualified. I do not know that I was ever an officer in either the Crown or the Mitchel. I cannot state when it was that I was an officer in the Empire

as I paid so little attention to it. It might have been in 1910. I didn't have any business to do and never was asked to do anything except one time I believe they said that they had increased the stock from twenty-five cents to thirty cents and said that the rest of the directors had made it. They sent me a letter perhaps stating they was going to increase the stock, and I never received it; that is all the business I ever did or ever was asked to do. I never qualified by taking the oath of office and was never asked to do so: I believe that is my signature to the letter which you hand me but I didn't write no letters. I signed a letter up at the office in the Peyton Building I believe one time, something about when I was over the property. Mr. Belden read it over and asked me if I would sign it, they said I wouldn't take any chances, that it was something to help boost the property; that it was a note of his and would enhance the value of the stock. I think he read it over to me before I signed it.

The letter admitted in evidence and marked DE-FENDANTS' EXHIBIT "192".

I was up there a few days but was only over the property once. One day I went up over the Crown Mountain, saw the prospects on the Crown; I went into a hole there on the Empire property. I don't know what a tunnel is as I was never in a mine in my life, it was a kind of a tunnel, what they called a tunnel, and I went into it. They told me that was where they were expecting to strike the coal. I knew that the coal did not show on the surface. Belden and

Wayland told me that they were satisfied that the coal continued into the Empire ground and that is the reason I first bought the stock but I do not remember about what they said about the Empire being the more regular formation. The real estate which I gave them was in Umatilla County, Oregon, and I had lived on it several years and it was occupied at that time. The notes that I received, one of them was the Walter J. Wood note in Walla Walla. I do not remember any other report which I made, one which Mr. Hopson and some others signed. I think maybe I did but I wouldn't be certain.

On REDIRECT EXAMINATION by Mr. Garrecht he testified:

I took no part in the dictation of this letter and I did not know anything about how far the veins were apart but they showed me a lot of prospect holes opened up.

(Witness excused.)

A. L. DEMARIUS, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is A. L. Demarius and I live five miles east of Milton. I purchased some Empire coal stock, and I bought the first from Mr. Belden. I got it close together and the last I got from Mr. Bryan, in 1909, I think, the whole business. The first I say I got from Mr. Belden, well, he was down there and I

don't know whether he closed the deal or not but he talked to me before I purchased it; said he thought it was all right; recommended it to be all right. I took 1000 at that time and then later I took 6000, paying cash for what I got. In regard to the first one thousand dollars that I paid for the Empire stock, they told me that they wanted it to improve the mine; that they had started a tunnel and put in the railroad. At the same time I got two shares of railroad stock. They valued these shares at a hundred dollars apiece, I think they claimed but they did not say what was to become of the one hundred dollars. I got it right in with the other, and they considered this really as worth one hundred dollars, was my understanding; talked that way, I would get a couple of shares with each piece.

On CROSS EXAMINATION by Mr. Williams he testified:

I think the time when I talked with Belden and Wayland was along in the fall of the year, about October sometime, 1909, I think it was in Walla Walla, when I met him the first time and the second time I think was at Milton. Some of them had been at my place but I don't just recollect who it was, three or four of them together all the time; they was around there. I don't just recollect the date when they were at my place but it was along there in the fall. I am quite sure that I talked with Belden and Wayland. I don't know whether they were both there at Walla Walla the first time or not; I couldn't say as to that.

At the time I gave the check for the stock I think I was at Freewater. Belden said he thought the property was all right, in their opinion it was all right, but I did not go into details in particular. They said they had started the tunnel and was at work on it at that time. They also spoke about a railroad and thought they would be paying dividends in about eighteen months. They would have to have the railroad in before they would take out the coal. The last deal I met Mr. Bryan himself, who recommended it. I attended no meetings at all.

(Witness excused.)

MRS. JENNIE HARRINGTON, called and sworn as a witness for the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is Mrs. Jennie Harrington, and I live at Payette, Idaho. I invested in Empire Coal stock to my sorrow, having bought it of Mr. Belden. He said it was valuable; he told me that there was acres and acres of this coal land and it was simply a mass of coal, and he said there was just a beautiful stream of water between it and the Crown, and said it was just as valuable as the Crown property and he would advise me to buy in the Empire. And I said, "Mr. Belden, I am a poor widow woman and all I have I have to work for it." And he says it will be the best investment, Mrs. Harrington, that you ever made, he says, "You will be getting a dividend by 1912, and you will be getting twenty-five dollars a month as long as

you live and it will go to your children when you are dead." He said as I was a poor widow woman he would let me have it for twenty-five cents and the money was to develop the mines; he said the railroad would be built in there by the first of September, 1911, and by 1912 we would be getting our dividends. He said it was not assessable; we would never have to pay any assessments on it at all. I bought 800 shares in all and paid \$200.00 in notes, which I afterwards paid at the bank.

On CROSS EXAMINATION by Mr. Williams she testified:

Belden said the stock was worth one dollar a share, had been selling at one dollar a share, the Empire stock, and said it was just as valuable as the other stock. He did not try to get me to buy Crown stock, because he said this was cheaper for me and it was just as valuable as the other. I don't remember that he told me anything about the coal veins that were on the Crown. He said there were hundreds of acres of this coal land and it was simply a mass of coal. He didn't exactly say what work they were doing on the Empire; said they were building a road and they would soon have it finished. He was talking about the Empire and he told me what kind of property it was. He did not tell me that the Crown property had the veins opened up and that they believed the coal extended over into the Empire. He didn't tell me anything much about the Crown; told me it was

as valuable a mine as the Empire, was worth just as much as the other.

(Witness excused.)

MRS. JENNIE INMAN, called and sworn as a witness on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

My name is Mrs. Jennie Inman and I live at Payette. In September, 1909, I bought stock in the Empire Coal Company. Before I bought my stock I had a talk with Mr. Belden and he said it was the best investment that we ever could make and it would be of great benefit to us and that we would never need to work any more. He knew my husband was not able to work and I was not able to do much of anything neither, and he said we never could lose anything by it. I told him I was afraid to go into it; we had to work very hard for what little we had; and he said it was an impossibility; we couldn't lose especially because it was in Canada and I told him I had heard of such things before, the big fish would always eat up the little ones; and he said in this case it was altogether different; it couldn't be done. I bought 6000 shares and paid twenty-five cents a share, giving property in exchange for it. The property was situated in Middetown, Idaho. He stated that the stock was being sold to develop the mines and I would get the first dividend by January 1st, 1912. They spoke about the Crown mine but he advised me to buy in the Empire; he said eventually it would be the best mine

of the two; he would prefer that mine, and didn't urge us any way at all to buy in the Crown. I knew very little about it. I didn't know anything about any mine at all and the Crown and the Empire was all he talked about and he didn't encourage us at all in buying the Crown; he wanted us to buy the Empire as it would be the best mine.

On CROSS EXAMINATION by Mr. Williams she testified as follows:

At the time I had the conversation with Mr. Belden there was present Mr. Inman, myself and Mr. O'Rell. I made my purchase in September 1909, and Mr. Belden told us about the coal formations how good they were. He said he thought it was as good as the Empire. He said that they were driving a tunnel on the Empire at that time. I signed the document which you show me but I don't remember whether I read it at the time or not I can't say.

Document admitted in evidence without objection marked DEFENDANTS' EXHIBIT "193" and read to the jury.

THE WITNESS.—He never said that to us at all; it was treasury stock. I was not at the meeting that was held there at that time and did not hear anyone talking about the stock.

On REDIRECT EXAMINATION by Mr. Garrecht she testified as follows:

The body of that receipt is not in my handwriting, and I don't remember whether I read that at all.

(Witness excused.)

WHEREUPON an adjournment was taken until 10 o'clock A. M. March 29th, 1914, and thereafter court duly convened; present as before.

H. S. HOUSE, recalled on behalf of the Government, on direct examination by Mr. Garrecht, testified as follows:

I have examined the books of the Empire, Crown and Michel, for the purpose of ascertaining who owned the certificates from which the stock sold to Mr. Cooper was transferred. All of the Crown stock was transferred from certificates that were owned by the International Development Company. All of the Michel stock was issued from certificates that belonged to the International Development Company, and of the Empire stock there was 4576 shares of that that was. transferred from certificates that had originally come from the treasury to the International Development Company at twenty-five cents a share, for which she paid thirty-five cents, and forty-five hundred and seventy-seven shares of Empire stock was transferred from the certificates that had originally come from the treasury at twenty cents a share. The total property for stock in the Crown and the Michel which was issued from the International Deevlopment Company's certificates was real estate valued at \$6400.00. The proceeds did not go to the treasury of these companies. I have examined the books of the companies for the purpose of ascertaining from what certificate the stock

purchased by Mr. Dunlop came and find that he purchased 6000 shares of Empire stock at twenty-five cents a share for which he paid cash, \$1500.00. All of this Empire stock was transferred from a certificate that belonged to the International Development Company. None of the proceeds went to the treasury of the Empier Company. He got three shares of Crows Nest & Northern Railway stock and these three shares were purchased by the Empire Coal & Coke Company from the International Development Company. None of the proceeds went to the treasury of the railroad company. He also purchased one thousand shares of Crown stock at seventy-five cents a share and this came from certificates that were held by the International Development Company in trust for the railroad company. There was fifty cents a share of this one thousand shares, or five hundred dollars that went to the railway company. That was turned over to the railroad company. The stock purchased by Mr. J. A. Hayton, the Empire stock, was transferred from a certificate that was owned by the International Development Company. This was the stock for which he paid \$300.00. Then afterwards he purchased 2000 shares of Crown stock for which he paid \$750.00 in cash. He first gave his notes and then paid his notes. This 2000 shares of stock was transferred from certificates that belonged to the International Development Company. None of the proceeds went to the Empire or the Crown. I can also show from what certificates the stock purchased by Mr. Kirk was transferred. He purchased 15,835 shares of Empire stock, all of which was transferred from certificates that were owned by the International Development Company. He purchased 23,167 shares of Crown stock and all of this stock was transferred from certificates that were owned by the International Development Company. He purchased 5000 shares of Michel stock and that was transferred from certificates that were owned by the International Development Company. He paid in all \$2706.45 in cash and real estate valued at \$12,500.00. On this real estate deal there was included 5000 shares of Mills I cannot tell at what price it was taken. That was turned in, that real estate as cash. None of the porceeds went to the treasuries of the Crown, Empire or Michel. He got two shares of railway stock which was part of the stock that was purchased by the Empire Coal & Coke Company from the International Development Company. None of the proceeds went into the treasury of the railroad company. Mr. A. L. Demarius purchased 8000 shares of Empire stock for which he paid \$2000.00 cash—first gave his notes and then paid his notes later. All of this stock was transferred from certificates that were owned by the International Development Company but none of the money went into the treasury of the Empire Company. He got four shares of railroad stock but none of the proceeds went into the treasury of the railroad company. This was part of the railroad stock that was purchased by the Empire from the International

Development Company. Mrs. Harrington purchased 800 shares of Empire stock for which she paid cash \$200.00. She first gave her notes and then paid her notes. All of this stock was transferred from certificates that belonged to the International Development Company and none of the money went into the treasury of the Empire Company.

On CROSS EXAMINATION by Mr. Williams he testified as follows:

The Dunlop sale was not a note transaction. There was \$1500.00 in cash. The Cooper transaction was a real estate deal; she traded in a section of land valued at \$9600.00 for all of this stock. The Hayton was all cash. In regard to this list which I have here, this shows the names of whom the railroad stock was issued and the number of shares, and this shows where the railroad stock was got, that is, where they received 3,333 shares at fifteen cents a share and these figures out here are figures that are listed in the minute books of the Empire and where they received railroad stock with the stock that was purchased in the Empire. This is a list of every one that got railroad stock.

The list identified by the witness marked DE-FENDANTS' EXHIBIT "194" for identification.

(Witness excused.)

MR. GARRECHT.—That is the Government's case. In the matter of the third count in the indictment, we don't think it has been sufficiently contested and we withdraw the third count.

(Whereupon the jury retired.)

MR. MILLER.—The defendants at this time move the court to direct the jury to return a verdict of not guilty upon the first and second counts in the indictment and to withdraw them from the consideration of the jury for the reason that the first count of the indictment does not state facts sufficient to constitute an offense under Section 5840.

THE COURT.—That question cannot be presented in a case of this kind in this court. You can only object to the indictment by demurrer or motion to arrest the judgment.

MR. MILLER.—And the same as to the second count.

Further that there is not any evidence showing that the defendants or either of them made any false representations as to the matters charged in the information, and there is not any evidence that the defendants or either of them, did other than express their opinion that the veins of coal on the Crown extended under the Empire.

Further there is not any evidence of a conspiracy between the defendants to defraud the parties named in the indictments or any other person. Neither is there any evidence of a conspiracy of any kind having been entered into, or no evidence of any acts having been committed under any conspiracy.

Further the testimony shows that whatever state-

ments were made by them relative to the existence of coal on the Empire, claim was based upon statements made by the Engineers or in the defendants' opinion the Crown veins extended under the Empire.

Further if such statements were made by defendants or either of them, it was merely a matter of opinion for which they could not be held criminally liable.

Further all of the evidence shows the defendants were acting in good faith and even if their judgment was wrong and investors lost money they would not be guilty of any crime; in other words, the defendants could not be convicted for error of judgment.

Further, that there is not any evidence that the defendants or either of them devised any scheme or artifice to defraud the parties named in the indictment or any other persons, neither is there any evidence that in carrying out any scheme or artifice to defraud the defendants or either of them, deposited or caused to be deposited the letter or letters set out in the post office establishment of the United States for the purpose of defrauding any person or persons, neither is there any evidence that they deposited these letters in the post office for the purpose of assisting in carrying any scheme into effect.

That the evidence is insufficient to establish the crime attempted to be charged in the indictment or either count thereof as to either of the defendants.

THE COURT.—On the entire case I am satisfied it will have to go to the jury. The motion will be

denied. Whether the testimony is true or false is solely for the jury.

(Defendants except and exception allowed.)

MR. WILLIAMS.—We move the court to withdraw from the consideration of the jury all evidence relative to defendants having sold personal stock representing it was treasury, and all evidence relative to sale of railroad stock for the reason it is not within any of the issues in the indictment or letters contained in the first and second counts thereof.

(Motion denied. Defendants allowed an exception.)

(The jury returned into court and Mr. Williams made an opening statement on behalf of the defendants.)

WHEREUPON the following exhibits were admitted in evidence without objection:

Defendants' Exhibits "195" and "196" (pages 18 and 19 of the Michel minute book).

Defendants' Exhibit "197" (page 27 of the Michel minute book).

Defendants' Exhibit "198" (page 28 of the Michel minute book).

Defendants' Exhibit "199" (page 50 of the Michel minute book).

Defendants' Exhibit "200" (page 53 of the Michel minute book).

Defendants' Exhibit "201" (page 9 of the Empire minute book).

Defendants' Exhibit "202" (page 14 of the Empire minute book).

Defendants' Exhibit "203" (page 17 of the Empire minute book).

Defendants' Exhibit "204" (page 19 of the Empire minute book).

Defendants' Exhibit "205" (page 24 of the Empire minute book).

Defendants' Exhibit "206" (page 32 of the Empire minute book).

Defendants' Exhibit "207" (page 34 of the Empire minute book).

Defendants' Exhibit "208" (page 38 of the Empire minute book).

Defendants' Exhibit "209" (pages 40, 41 and 42 of the Empire minute book).

WHEREUPON an adjournment was taken until 2 o'clock P. M. April 29, 1914, and court thereafter duly convened; present as before.

Whereupon the following exhibits were admitted:

Defendants' Exhibit "210" (page 9 of the minute book of the Crown Company).

Defendants' Exhibit "211" (page 26 of the Crown minute book).

Defendants' Exhibit "212" (page 31 of the Crown minute book).

Defendants' Exhibit "214" (pages 42 and 43 of the Crown minute book).

Defendants' Exhibit "215" (page 25 of the Empire minute book).

Defendants' Exhibit "216" (page 46 of the Empire minute book).

Defendants' Exhibit "217" (page 52 of the Empire minute book).

Defendants' Exhibit "218" (page 54 of the Empire minute book).

A list of the officers and directors of the various companies admitted and marked DEFENDANTS' EXHIBIT "219".

RUSSELL G. BELDEN, one of the defendants, after being first duly sworn, testified as follows:

## DIRECT EXAMINATION by Mr. Williams:

My name is Russell G. Belden, am thirty-five years old and have resided in Spokane for thirty years.

## Q.—And after that what did you do?

A.—I spent a year, nearly a year in Spokane in—no, I went out and worked for Mr. Clagstone of Idaho for several months and then I came and worked on a salary for a few months and then I started in the real estate business with Mr. Wayland. Started in -

the real estate business when 25. I would say that we ran our business for something like a year before we incorporated the R. G. Belden Company. Before incorporation it was co-partnership, Mr. Wayland and myself. Did very little other than real estate, some brokerage. We had adjoining offices with Mr. Hampell and Mr. Weeks for that period that we were in the real estate business, and it was during that period that I met him. It was about a year before we organized the International Development Company. The records of the R. G. Belden Company show what the assets were. Mr. Hampell never was associated in the R. G. Belden Company. We organized the International Development Company prior to becoming interested in British Columbia and our first work was an irrigation project; the coal propositions arose after the Development Company was organized. It was before the organization of the Development Company that the option was acquired on the McGuire group. These McGuire claims were down on the Flathead, in British Columbia. The Flathead is about twenty-seven to thirty miles from the Empire and Crown claims The McGuire claims were the first ones we investigated. Professor Shedd went in with me from Belton, Montana. We went up about 75 miles, and I covered that field very thoroughly, and then made an investigation of the Crows Nest and examined it and abandoned the McGuire group. Hempell joined me on that trip, as I came out, and we worked as long as our provisions lasted-previous to that, however, had not gone into this—up Michel creek. I went over the Corbin property and I could have had that ground, but did not like it. Lamareaux then said, "Belden, I have been with you long enough now so that I know what you want and I will take you up and show you a property here," and then he took me into the Michel ground and the McInnis ground. The McInnis ground at that time was already staked and developed. I had visited practically all of the large mines in the district. I believe I spent practically eleven months on this work, and had not accepted anything that had been offered.

When Lamareaux took me up to the Michel Creek I went over the McInnis property first and examined that very carefully. It had been opened up quite extensively, just as extensively as it is today. There has been no work done on it since. We traced the veins along the mountain on the McInnts ground, and we crossed the creek to what became the Michel property and traced the strata of rock, sandstone, slates and so forth. Lamareaux was with me. It was at that time that I staked the Michel claims, and had an engineer's report on the Michel. Mr. Gamble was the engineer. I believe we discussed the Michel also with Mr. Green. I don't remember the date that Mr. Gamble came into the employ of the company. Prior to that I had talked to Mr. Thorn who had done the work on the McInnis property and I had also discussed the property with Mr. McViddie, the Provincial surveyor. He was not a coal expert exactly,

but the man who has done practically all the government survey of coal properties in there.

- Q.—Now, who was this one engineer you said you went in with?
- A.—Mr. Thorn at one time with the Crow's Nest Pass people, at one time with the Canadian Pacific; with the Canadian Pacific at the time the McInnis property was entered upon.
  - Q.—Was he a coal expert?
- A.—Yes. He put in the big property at Hosmer for them.
- Q.—Did he give you an opinion as to what the situation was on the east side of Michel Creek?
  - A.—Yes.
- Q.—Did he say anything about whether the formation continued on that side, in his opinion?
- A.—He told me at that time that they had always intended to have that property, along with the McInnis property, if the Canadian Pacific took it.
- Q.—What did he say as to the formation continuing?
- A.—He said it was very regular, wasn't any question but what the coal unlaid the property.
- Q.—How soon after the organization of the Michel property was it that Mr. Gamble came with the Michel?

A.—I should judge it was about a year afterwards, after the organization of the company. Mr. Gamble said there wasn't a question but what there was coal on it, and the permanent work was under the direction of Mr. Gamble.

A.—The first year Mr. Hemphill took charge of the camp there with prospectors, and Mr. Penn, and that was a period of prospecting, purely for locations of veins on the surface; and while they found small showings of coal they didn't find anything in the way of a vein; and when our permanent work was started Mr. Gamble took charge of that.

Q.—Did you know what companies Mr. Gamble had been connected with as coal man?

A.—Mr. Gamble was selected by the Pittsburg stockholders in the Crown Coal & Coke Company, with the recommendation of Mr. Taylor, who is considered one of the most prominent coal experts of the United States, and who was in charge then and still is of the Pittsburg Coal Company, and Mr. Taylor selected Mr. Gamble for us, and from that time had charge of the development work on the Michel.

Q.—How many prospect tunnels were there around on that?

A.—Mr. Hemphill made a report of five or six. One is in a kind of out of the way place up the hill and was in the brush. From memory I would say it was in 170 feet.

- Q.—Was there any of these places what appeared to be a coal vein?
- A.—Yes, there was a number of them there that ran into about a five foot deposit of a very black material that had all the appearances of being coal. I know that when the different stockholders visited the property they would invariably say that it was coal and we had to explain that it was not coal.
- Q.—Did you always explain to them that it was not coal?
  - A.—Yes.
- Q.—Well, were they ever left with the impression in any way at all that that was a coal seam?
- A.—No. There were pieces of coal—oh, from the size of your two fists down that we would run across in this tunnel and in these shafts.
- Q.—Were the tunnels ever driven in beyond the point where coal should be found?
  - A.—No.
- Q.—The dips of these strata of coal as you described on the Crown, is at about what angle?
  - A.—About twenty-eight to thirty degrees.
  - Q.—And towards what direction?
  - A.—Towards the west.
- Q.—And can you give the time when you first examined these claims?

A.—That was very early in the spring.

A.—Of 1907?

A.—Six would be my memory.

A.—And can you gi e approximately the amount paid to the government in crown granting these four sections?

A.—That money was paid over to the Bank of Montreal and my memory is we paid in twenty-five thousand dollars.

The railroad was first inaugurated in 1908 and bill was passed in Parliament for our charter that year. Mr. Wayland, Mr. Hemphill and myself did that work, carried the expense, and then turned it over to the coal company. In organizing that railway company we acted through Mr. Bass, Secretary of Parliament, in Victoria. He is a barrister.

Q.—And in the organization of that railroad company did you follow the instructions and advice of Mr. Bass in the method of procedure, Mr. Belden?

A.—Entirely, Mr. Williams, to the extent that before we organized we even had Mr. Bass come down here and draw up these plans and so forth.

Q.—And the things that show in the minutes of the Crow's Nest & Northern Railway Company with reference to the organization of the company, was that the plan of Mr. Bass?

A.—Entirely.

Q.—And were the minutes and all of these things drawn by him?

A.—The minutes were outlined by him. There may have been a little change in the wording but not in the sense in any way. Our object in coal companies becoming interested in the railway was we felt that the more companies that were interested in the railroad the closer they would be tied to each other, the less liability of litigation among themselves and there would be a much better opportunity to finance them because of there being that much more commodity for a railroad. The purpose in securing the land of these coal claims along the entire valley outside of the question of the coal, was the value of the timber, it is very heavily timbered. Our valley there, is considered the most valuable piece of timber in British Columbia.

Q.—Now, on the question of the organization, the question of the management of these different companies, the Crown Coal & Coke Company, the Empire, the Michel, did you at any time attempt to dictate the policy of these companies, except to express your own opinion?

A.—No, Mr. Williams, I have always advised a larger board than the smaller boards than they originally had because of giving the different communities a representation on the board, and I would write them that our annual meeting would be next month, January, advise them to get together and

have a meeting and send in a committee and select at that time the man that they wanted to represent them on the board, and Mr. Wayland and I always voted for the same man that they selected to represent that community, and in the case of proxies sent to me they were voted according to these directions. There was only one time that we ever had any special effort to secure proxies and that was because it required a quorum and it not being the regular meeting I telegraphed to Walla Walla and these proxies were sent in the name of Mr. Hopson. I didn't do anything in the way of dominating the boards. Mr. Wayland and I have never had the control of any one of these boards. There were no dummy directors. We never have had any men representing us other than ourselves on the board.

Q.—What was the object and purpose, Mr. Belden of these different companies having the same fiscal agent, the International Development Company?

A.—Primarily we were about the only ones in Spokane that were in a position to take these offices. The stockholders lived in different communities and our office was practically the only one that could fill that. The question of economy entered into it very largely. There were times at the early organization of these companies that we made no charge whatever, to save the companies that expense. Had they each carried a separate

office, why it would have added practically three times as much expense.

The first year of the Crown Company I was made the managing director. Mr. Ferrell consulted the other directors at Milwaukee and wrote me offering me twenty-five hundred dollars for my services. I talked it over with Mr. Hemphill and Mr. Wayland and rejected that, saying that I felt the company could not afford to pay a salary. There was one year I did draw a salary from the Crown. I was giving three quarters of my time to the work of that company and I had a great deal of expense with it; it was the time we were very active in our work. I was working at the properties at Crow's Nest. I guess it was fifteen hundred dollars I drew for a year.

I built the wagon road. It took me practically all summer. It had been impossible prior to that time to get in with a saddle horse except by carrying an ax with you. Lamereaux and I blew all of the stumps and marked the road before the men would go to work in the morning and after they would quit, and through the working hours of the crew we worked right with the crew, either with the teams or with the men. Wayland was there with me on the ground. Mr. Butterfield, and Mr. Hample and Mr. Ferrell, were attending to stock sales.

The International Development Company was

allowed a commission on such sales as it made of Crown, but in that resolution each of the syndicate members were allowed full commission. Outside of that one year, our office never received anything in the way of salary. There has not been a time in the history of any of these companies but if they had to have money the International got it for them, and we paid the bills if they were not able to pay them. In four out of five sales, and probably a much larger proportion, the entire twenty percent was paid out to the man making the sale. If it became too heavy a drain on the International I would occasionally make a charge of two and a half percent, and once in a while five percent against this man, just according to how heavy it was draining on us, not with an attempt to make a profit, but to help bear my expenses in the field when I was helping the man. relving for profit on the development of the propertv.

We didn't have the control at any time, but we figured by selling the stock in Walla Walla and Payette and in these districts, by all working along the same lines we would have the control, protect our investment. They were mostly note sales and trades for land. What we purchased we would sometimes pay cash and in one case I remember we did turn one or two notes. In several cases we traded the land. In making these sales of personal stock we did not compete with the com-

panies. We aimed to work in conjunction with the company in keeping blocks of stock off the market that would interfere with the treasury sales. For instance, if one of the original syndicate members of the one hundred thousand shares would offer stock at less than the treasury price, we would try to trade this man or buy this stock from him so as to keep it from interfering with the sales of the treasury, when we would dispose of that stock. It was usually disposed for land, trade. There were a few exceptions to that in the Empire, I understand, but no exceptions to that in the Crown.

Q.—What was the reason, if any, that you did not take real estate for the Crown or the Empire treasury stock?

A.—For the reason that you would not realize on your real estate to get the required amount that the resolutions called for in the minutes. We had no authority unless we had the net amount to turn over to the company. We figured that we were assisting the company in doing this. In these personal sales transactions the International Development Company acted simply as a clearing house. What I was leading up to was that we would take what we had that we could turn to these parties and would try to replace it with something else, and as a rule we got mortgaged stuff and had to give unencumbered stuff away to the Eastern stock-

holders. There was more than the control of the Crown in the East, and largely among Mr. Ferrell's friends.

- Q.—Now, with reference to the Empire property. Before this corporation the Empire Company went upon any of these stock selling campaigns, was that examined by an engineer?
- A.—Mr. Gamble. He was with the Michel and with the Crown both, for over a year.
- Q.—Do you know at whose suggestion this Empire property was acquired for coal purposes?
- A.—Mr. Gamble told me to acquire the Empire property by all means. He said there was absolutely no question but what there was coal underlying it, and I remember very distinctly we were on the East side of the Crown Mountain at the time of this interview and he explained his theory thoroughly to me. That was prior to the incorporation of the Empire.
- Q.—Now, Mr. Belden, were any coal mines ever opened up on the Empire?

A.--No.

- Q.—Have you been over the property thoroughly?
- A.—No. I have not covered the Empire very thoroughly. I have never been up only on one or two general trips there. I never attempted to prospect the Empire myself. The work that was

done on the Empire was under direction of Mr. Demmick and Mr. Bell. Mr. Bell is a mining man that the Payette stockholders requested to have charge of the work up there. About five hundred feet of tunnel, or four hundred and fifty was run. On the Empire we had not reached our solid formation or gone in sufficient to determine it.

Work has been suspended on the Empire and Michel because of the non-payment of our notes, a lack of funds. I think that less than ten percent of the notes have been paid that were taken for stock.

We discussed the bond deal very thoroughly at the Payette meeting. This was the time that was referred to yesterday in the testimony when Mr. Brainerd and Mr. Bell gave an interview on the property, and we discussed the bond issue and at that time our stock sales commenced to be very successful on these notes, and we had at that time one hundred and eventy-five thousand dollars worth of notes on hand, and I remember Mr. Wayland having a memorandum at that time showing just what the sales were, and the stockholders opposed the bond issue because they felt that in mortgaging the property for so large an amount it was going to embarrass us in the future, and they felt we could raise the money on our stock sales, so they voted down the bond sale. We told the stockholders distinctly how much we had on hand then, and we also gave them the estimate of the railroad.

In regard to commissions, there were occasional times that I was especially anxious to get funds we allowed agents twenty-five per cent, and on all of this stock that Mr. House terms personal stock, which was the original ownership in the property, we paid thirty percent on all of that. In the cases I mentioned before, if I was active in the matter and helping make the sale, I would charge a small amount.

Q.—Now, did you ever at any time represent to any one that the Michel or the Empire property was proven ground?

A.—No, I always spoke of them from a standpoint of the formation, what the other men had said, and it was rarely the case that I didn't have a local man that I could refer to who would speak of his opinion. We were continually sending out letters-for instance, you will find in our files there was often a man would get five and six invitations. If we took a conditional note that was to induce him to visit the property. If he couldn't visit it at that time we would extend that thirty days; anything to induce him to visit the property. encouraged our salesmen to induce them to go to the property. Now for instance, Walla Walla, Mr. Hopson has spent fully half of his time with my salesmen to see that things were justly stated, and there was an official of the company there continually, and also to check on these notes. At Payette I had one of the directors, who was a salesman,

Mr. Gorton, and he always accompanied Mr. Ferris, and if it was a case like Mr. Vinson who had been over the property he would accompany them, or somebody else that had been over the property, or one of the directors. On the Empire at my suggestion they organized and sent up at their expense a man to investigate the property before organization.

- Q.—Speaking generally now, and without particularizing, have you at any time endeavored to leave any false impressions through the mails as to the character of any of these coal claims?
- A.—At no time, Mr. Williams. The stockholders always have a written report. We try to have some one go to the property just before the meeting and make a report orally. That did not appear in our records.
- Q.—Referring to an exhibit that is a prospectus of the Empire Company that Mr. Bryan testified about; did your office ever use that prospectus?
- A.—Not unless it was used under the instructions of Mr. Vinson. Mr. Vinson sent that draft in. I saw his instructions to Miss Covington. Miss Covington had it printed and I didn't see them until after they were printed. I criticised it after it was printed.
- Q.—Did you ever use that with the name of the International Development Company agent or anything of that sort?

A.—No, Mr. Bryan and Mr. Vinson were the officers of the company and they got it out as officers of that company. The directors of the Empire usually meet at our office.

Q.—Now, referring to the railway right of way. Was that ever staked on the ground?

A.—Yes, the stakes are there. I think through 1907 and 8, or 1908, about that time. It was just subsequent to the charter. It was done under Mr. Diffenderfer and Mr. Ewen, two engineers, during the same period Mr. Gamble was there. I recall that it was an entire survey.

Q.—Well, how did it happen that there was this difference of the Empire line?

A.—We asked Mr. Lamereaux where that line fell, and he told us just over the creek, and right off at the foot of that hill; and just across the creek there is an old timber line, slashing, that followed right straight down and we always assumed that that was the east side line of the Crown.

Q.—Now, your entire dealings with this property, any dealings you have had, Mr. Belden, especially the Michel and the Empire, what has been your opinion or belief as to this property being coal property.

A.—I believe there is coal underlying both of these properties. The same vein. I have never met a man yet, until this case, and discussed with

- Mr. Thomas, who took the contrary view to the view that I have.
- Q.—Referring to the question of the railway stock that was given with the Empire, what would you say as to the amount of that stock that had anything to do with sales of the Empire Company, after its incorporation?
- A.—Three or four shares. There were a few shares that were sold, and then we withdrew it, at the time of Mr. Butterfield's bond deal coming up, I telegraphed the men upon receipt of that cablegram.

## CROSS EXAMINATION by Mr. Garrecht:

- Q.—On what companies did Mr. Ferris receive any commissions for sales?
  - A.—On the Crown Company.
- Q.—He never had anything to do with sales of stock in any other company?
- A.—Never was a stockholder in any other that I know of.
- Q.—In what company were there stockholders that you refer to as eastern stockholders?
- A.—In the Crown Company. That was practically the only company in which stock was held in the east, with one or two exceptions.
  - Q.—Now you say that your relations with Mr.

Butterfield in the conduct of the affairs of this company were not pleasant.

- A.—No, I did not say our relations were not pleasant. We have never had any special clashes.
- Q.—Did you ever have any controversy in any of these companies?
- A.—Well, had arguments a good many times, yes.
- Q.—In what companies were these arguments, in which they lined up in force.
- A.—Both in the Crown and in the Michel, but we generally came together on an agreement. Mr. Butterfield was a man that expressed his own ideas and I am a man that expresses mine, so we have had a great many arguments.
- Q.—Well, isn't it a fact that you only had one real battle in the Crown corporation in which there was a difference of policy?
- A.—No, we had several very serious ones. The votes may not be divided in the final voting, but we had some very abrupt arguments on it; adjourned meetings so as to take up the discussions between ourselves in the evening, and then we might have arranged a certain line.
- Q.—Do you remember February 14, 1911, where the question of the right of Mr. Wayland to pass 150,000 shares of stock was questioned?

- A.—Yes. I didn't listen to that meeting enough so that I recalled just what that clash was about, in that meeting.
- Q.—Was Mr. Butterfield lined up with you in that clash?
- A.—Mr. Butterfield was lined up with the other parties and when he came to the voting, voted our way on account of a change of policy which he explained afterwards, but I didn't know that until after the meeting.
- Q.—But the records show that the vote of Butterfield, yourself and Mr. Wayland were cast on the same side in that controversy.

## A.—Yes.

I will ask you to look at Plaintiff's Exhibit "186" especially directing your attention to the resolution passed by Sinard and ask you if that resolution had not been prepared in advance?

- A.—I will say this, we never prepared a resolution expecting any officer to adopt a resolution. We may have drawn up a resolution as an outline of what they should approximately do, or what would be the proper outline, but it was never set down with any specific instructions to follow that wording.
- Q.—Now, weren't printed blanks sent out from the office of the International Development Company with your name printed on them as R. G. Belden?

A.—Certainly.

Q.—Wasn't Mr. Kirk put on the board at a suggestion from you?

A.—He may have been put on the board at a suggestion from me, after talking with other stockholders.

Q.—You say, if I understood correctly, that the Michel property was valuable for timber?

A.—Yes.

Q.—Don't you know as a matter of fact that the timber on that land had already been covered by a timber license?

A.—Part of it had, but not the major portion of it. Now there was a little over three quarters of one section on which there was very little timber that was alienated by timber rights, on the other there was just about the amount to make up the balance of that section which was alienated. Mining licenses cover the timber licenses. We paid our ten dollars straight through and got all the timber. You couldn't saw it off and make it into timber and market it, no, you can't do that; "mining purposes" is very broad. In that sense you could use it for your buildings or any purpose connected with the property. I wouldn't have the right to market that timber. I have the right to that timber, as far as my mining license goes. My letter of June 16th is much plainer than the law on it, so if there

is any misunderstanding there, they would not have understood it by the coal mine act, and yet those people had a copy of the coal mine act, that is the representatives for each field, the president, Mr. Vinson, and others. I never did make the representation that the timber was worth what they were paying for the mine.

- Q.—I believe you stated that Mr. Bass prepared the papers, resolutions, etc., for the Crow's Nest and Northern Railway Company. Now, who took care of the drafts and the arrangements for the minutes, etc., of the other companies?
- A.—That would depend upon the secretary. Understand Mr. Garrecht, I have never had anything to do with any of the minute books of any of these companies. They were kept in my office but I am not a bookkeeper, and never have been secretary of any of the companies, and all of these books that have been introduced in evidence here were all kept in our office. It was one suite and a portion of it was used by the companies and a portion by ourselves.
- Q.—And as you stated, when these other companies were too poor to hire office rent, or bookkeepers, etc., you folks furnished them, did you not?
- A.—Yes, I am not ashamed of that part of it, the books were properly kept.
- Q.—And they were kept to a large extent, as you claim, at your expense?

- A.—As far as the secretaryship part of it, yes,
- Q.—And your office or the International Development Company, had the say about who should have to do the work on these books; you hired them and paid for them?
- A.—Not the International, Mr. Garrecht. The secretary of the company, of each individual company, I don't think I have ever dictated a copy of the minutes of any of these companies.
- Mr. Brainard was secretary at one time as was testified yesterday, and did work on the books. Mr. Bryan at one time was secretary of the Empire Company, and he had the books down to Walla Walla. I believe Mr. House got the Empire books from Mr. Bryan at Walla Walla, if my memory is correct. The secretary of the companies had the minute books as far as I know.
- Q.—Were these claims not turned over to the Crown Company?
- A.—Yes, they were turned over to the syndicate members to the Crown Company.
- Q.—Now you testified that you traced through this strata and found the same formation on the Michel as you did on the McInnis; is that correct?
- A.—That is; I don't now what the Fernie shale is. I have heard them speak of the Fernie shale and I have always assumed that it was the shale

that was found in the location of Fernie, and there is one of the biggest mines right there at Fernie.

- Q.—Then what were you basing your opinion on up there with reference to the Michel?
- A.—On the observations that a man would make, from the average knowledge.
- Q.—Just look at the side of the hill and make up your mind whether there was coal in it?
- A.—I have worked in the mines. I followed the strata for instance, there was a strata of sandstone there they cut, some of them, ten or fifteen feet thick and other places where there are strata close to eighty feet thick, sandstone, and between there are strata of a certain thickness of slate and you could find these same strata on one side of the valley or on a relative position on the other side, you will find them in the same relative position.
- Q.—Now you said the mountain tops on the Mc-Innis side were limestone formations?
  - A.—Yes.
- Q.—Did you find the same limestone formation on the other side?
  - A.—Absolutely.
- Q.—Do you know whether coal is above the limestone formation or below it?
- A.—Coal is either above or below the limestone formation or in between it. The Frank mine, the

coal is between two limestone walls and is generally known all through that district as being between two limestone walls.

- Q.—Who was this Mr. Thorn that you said you had a talk with before you located these mines?
- A.—He had worked with the Canadian Pacific on the McInnis property and had done a great deal of that work there.
- Q.—Where was it that you had this talk with Mr. Thorn?
- A.—That would be prior to the application for the charter of the railroad, and that was the principal point that I talked with Mr. Thorn on, his figures on his railroad line there. I wanted to see if he had a permanent survey or just a projected line.
  - Q.—Where did this conversation occur?
  - A.—At Hosmer.
- Q.—Now what did Mr. Thorn say about the Michel property?
- A.—He told me that he had the opinion that the coal underlaid that side of the valley.
- Q.—Did you talk with him particularly about the Michel location?
- A.—I talked with him, explained where our ground was there, that it joined the Crow's Nest Pass Coal Company just to the north and laid just east of the McInnis property.

- Q.—Were you asking his opinion as an expert on mines with reference to the Michel, or his opinion as an engineer about the railroad you wanted to put through there?
- A.—The railroad is what I made my trip for. I am sure that Mr. Thorn told me that he believed there was coal on the Michel.
- Q.—Do you remember being down at Freewater or Milton and having a conversation with Mr. Muir in which you were endeavoring to sell him some stock?
- A.—I remember—the only sale that I remember with Mr. Muir was his purchase at the meeting.
- Q.—Now, is it a fact Mr. Belden that eastern stockholders ever controlled the Crown Coal & Coke Company?
- A.—At the time of this report that you were speaking of Mr. Garrecht, it was not only the eastern stockholders; it was some of the western stockholders that were with them. Now, for instance, Mr. Hemphill, voting with the east would have controlled the property, Mr. Hemphill, Mr. Butterfield, Mr. Arbucq was all with them.
- Q.—Now a large part of the stock as I understand you was paid for in notes?

A.—Yes.

Q.—Suppose you would go out and sell shares of stock and have one hundred thousand dollars

worth of notes and then there would be a resolution passed turning over to the International Development Company a certain block of other stock, would they, in making these settlements or transfers would the notes be passed from one company's treasury to the other?

A.—From the International Development Company?

Q.—Yes.

- A.—Yes, that is if I understand you, follow the outline of the minutes, their resolution. We would sell stock from the International certificate and afterwards that stock would be replaced to us by the certificate from the treasury.
- Q.—Did you ever give any directions to Mrs. Shepard while she was your bookkeeper about what certificates these should be issued from?
- A.—If I ever gave any instructions in regard to any matter in our books it would be simply maybe a charge in commission or something of that kind that I was familiar with. I am not a bookkeeper and not familiar with books.
- Q.—Do you ever recall having directed Mr. Christopherson?
- A.—I don't recall it. It would have been out of my line of work unless it would happen to be some little instance.
- Q.—Now, in the transfer of the notes from one treasury to another, who checked over these notes?

- A.-Mr. Hopson and I.
- Q.—What part did Mr. Hopson take in checking over these notes?
- A.—Why, Mr. Hopson and I would sit down and figure out how many had to go to the Coal Company and as I understand it and as I remember it, we made lists of these as we turned them over and signed and approved them. Our resolution provided that none of the notes should be due later than January 1st, 1913.
- Q.—And did you have any system about where the long term notes went to and who the short term notes went to?
- A.—What you are getting at is the fact that we would take the short term notes for ourselves?
  - Q.—Exactly.
- A.—Naturally we would because we were advancing cash and we had to have cash coming in. That was proper.

Whereupon an adjournment was taken until 2 o'clock p. m. April 30, 1914.

- MR. WILLIAMS.—We would like to put on a witness that just came in; we would like to withdraw Mr. Belden or rather, put this other witness on before recalling him.
- R. R. GAMBLE, called and sworn as a witness on behalf of the defendants, on direct examination by Mr. Williams, testified as follows:

My name is R. R. Gamble, and I reside at Ogden, at present and reached Spokane this morning. My business is that of mining engineer and I have had considerable experience with coal mining. I gradnated from college where I studied geology and I have had experience with Taylor and Sullivan for four years during which time I was engaged in coal mining. In my occupation I have frequently examined and experted coal properties, in twelve different states, covering a period of seventeen years. I was up in British Columbia in the Michel valley and tributary and examined the properties in July, 1907, from July, 1907, to March, 1908. I examined the mines of the Crow's Nest Pass Coal Company several times, also the Fernie and Michel and have also been over the McInnis or Trites Group several times and examined the formation. I was clear up to the top of the mountain on which the McInnis Group is located, so I could see west from there. I have also examined the formations and conditions on the east side of Michel Creek. I examined the west slope of the mountain which has been referred to here by the witness on which the Empire and Michel is located, as the Sentinel Range, but I made no examination on the east side. While I was in that section I assisted in building wagon roads and opened prospect holes and drove tunnels. We did considerable of this work on the Crown property and on the Michel during the period which I have referred to, from July, 1907, to March, 1908.

I have also been over the Empire property several times.

- MR. WILLIAMS.—Now, Mr. Gamble, what would you say as to whether or not the strata of coal that are found on the west side of the Michel Creek on the McInnis property and the Crow's Nest Pass Coal Company, whether they continue under the Michel claim?
- A.—Yes, there are outcroppings in the creek that show that the coal continues on east. There is limestone above the outcroppings found there.
- Q.—And when did you find these outcroppings in the creek?
  - A.—I think that was in July or August, 1907.
- Q.—What other facts are there that indicate to you that the formation continues under the Michel?
- A.—Well, there has been an upheaval there and the mountain has come up on one side and gone down on the other, and that has formed a valley and it is reasonable to suppose that the coal went on through before this break. The east side of the Crown was very precipitous. The west slope was probably thirty or forty degrees. That is the outcropping of what is known as the butt of the coal, and breaks off much sharper than the natural slope, as it is when it is first formed.
- Q.—Practically, what, if anything, does it indicate as to whether there has been that upheaval where one portion has slid past the other?

- A.—Well, if it had been formed in any other way it would be a gentler slope; that is, if it had been formed by erosions or any other substance it would be more broken. There are lots of places where there is limestone both above and below coal. Coal is found in nearly every stratification there is. On the McInnis group side I found coal both above and below. There is limestone stratification all through the section there.
- Q.—What, if any, advice did you give either Mr. Belden or Mr. Wayland as to the presence of coal on the Michel?
- A.—I told them that there was no doubt that there was coal there, just the same as in the McInnis and the Crown; and advised them to drive a tunnel.
- Q.—What advice, if any, did you give them as to these veins continuing into what is known as the Empire property?
  - A.—I advised them to acquire these claims.
- Q.—What, if anything, did you say as to the coal stratas continuing into the Empire?
- A.—I said that they continued undoubtedly and that it would be easier to mine on that slope than it would be on the east slope of the Crown. I think I remarked it was a toss up as to which was the better investment. It would be cheaper to mine on that slope than it would be on the Crown slope, opening a tunnel on Michel Creek. The loss would

be comparatively small by erosion or by the elements, but the advantage would be in favor of the coal that is lying to the east of the creek, as it stretches towards the creek. In the McInnis and the Crown and the Empire up near the northwest corner of the Empire there is an outcropping there. The sun would strike it and it was always very prominent; and the same formation was on the other two properties only not so striking. We often spoke of going up there but it was a hard trip and I never went up to see what it was. That would indicate that it was originally continued straight through on a horizontal or the same strata or the same plane as the north east corner of the Empire claim clear through to where that same outcropping was on the McInnis claims. That same structure must have been right straight through at one time. In the tunnel on the Michel claim there was shale and sandstone all the way through. It was kind of a mixture, sort of a stratification; be shale and sandstone and then shale and slate, and so forth. We were not in far enough to expect to find the coal that we found in place on the Crown property or on the McInnis claims. What led us to start the tunnel at the point at which we did, there was a small prospect shaft there in which there was several little seams of coal very plain, probably an inch or half an inch through. Q.-In good quality of coal? A.—Oh, that was just a streak. I don't think we ever tested that as to its quality, but that would

indicate that there was coal there, and there were some—I didn't call them chunks. A half an inch thick probably was the largest pieces we took out of there, they were right out of the strata. I think there was slate on one side and slate on both sides perhaps. That indicated that the coal was in place; that there was no fault in the formation; there was no break in it; that if we continued the distance that we had calculated we would strike the same vein of coal that we found in the Crown and McInnis. I think we encountered about twelve veins on the Crown property, where we dug prospect holes.

On the Michel we dug nothing only the tunnel because we expected to find no outcroppings on the west slope and we simply drove the tunnel without any prospect holes.

Q.—Do you recall any incident, Mr. Gamble, of Mr. Thorn of the Crow's Nest Pass Coal Company being over there on the property?

A.—Yes, he and I made a trip over the Crown Mountain.

ELMER BELL, called and sworn as a witness on behalf of the defendants, on direct examination by Mr. Williams testified as follows:

My name is Elmer Bell and I reside at Payette, Idaho; I came to Payette in '87 and have made it my home ever since. I have been on the Empire

property and I think I went there first in July, 1910, and remained there until in January, 1912. I was at one time employed on the Empire. During the time I was there I was employed on the Empire continually as superintendent. I superintended the driving of the tunnel and the doing of the work on the tunnel. I was sent up there at the request of the people in the town where I lived, the stockholders in that section in the Empire. I was acquainted with most all of them. Prior to that time my experience as a coal miner dates back to the time I was a little boy. There was coal mines all over the country where I lived and I have worked in them I don't remember just how long but I have had experience along that line ever since I was a little boy. I have always examined coal formation. I was always looking at the different formations that the coal occurred in. I did that for the reason that I wanted to see if I could find any coal on my father's place, and I wanted to get a line on all the formations that coal lays in to see if I could find anything there. I think I have become familiar with coal formations generally. The following year after going into the Michel section, in 1911, I examined the coal formations. I had more time then and I examined the formations pretty thoroughly, from the Michel up to the Crow's Nest Mountain. I also examined the stratas on the Michel and the Empire, and I came to the conclusion when I first looked over the property, that the Empire was just as good as the Crown. That was my first conclusion, and I have not changed it. I had rather have the Empire after what I saw of it than to have the Crown. The last time I measured the tunnel on the Empire it was 447 feet; had not reached at that time the point where we expected to find coal. A great many of the prospective investors in coal stocks come up on the ground. I showed them over when they came, showed them everything I knew, and there was not anything concealed from them by me. There must have been fifty or seventy-five come up during the summer months.

H. T. FRENCH, called and sworn as a witness on behalf of the defendants, on direct examination by Mr. Williams testified as follows:

My name is H. T. French and I live at Corvallis, Oregon. I am connected with the agricultural college there. In 1908, 9 and 10 I lived at Moscow where I was connected with the State University of Idaho, as director of the experiment station.

- Q.—Have you had any education at all along the line of geology? A.—Geology was taught in my course in college, in the scientific course and I had a short course in geology.
- Q.—Outside of that have you had anything at all to do with geology since coming out of college?
  - A.—No, sir, I have not.
  - Q.—Have vou taught it since? A.—No, sir.

I invested in the Michel and visited the property I think my first visit was in 1908 and examined the property at that time. Examination was not so very thorough. I visited the McInnis property and the Crown at that time and also a portion of the Michel, went over a portion of the ground and was in tunnel which was then there. I made my first investigation before I invested in the property and made another investment afterwards, bought more stock. No misrepresentations were made to me of the situation so far as I know.

On CROSS EXAMINATION by Mr. Garrecht he testified as follows:

After I was up there I invested in the Crown principally although I think I took some stock after that in the Michel; I am not sure but I think I did. I took 3000 shares in the Michel and I can't swear now whether it was just prior to my visit there or just after that visit. I took it through Mr. Butterfield, my acquaintance with him largely and on his recommendation. I did, however, afterwards invest in the Crown.

(Witness excused.)

R. G. BELDEN, recalled for further direct examination by Mr. Williams, testified as follows:

In regard to the testimony of Mr. Hogue regarding a sample of coal, that sample was sent to him. It was a sample received from the Michel. The question of consolidation of these various com-

panies was discussed several times with various stockholders. I think that was in the year 1911. I was visited by a committee and asked if I would assist them and I told them I would vote with the majority of the other stockholders. In the early days I was favorable to the consolidation but in the latter days only to the extent that it would work out to the advantage of building the railroad. If the companies were in a position to assist in that way, then I would have favored it. Wayland and I were not agreed on that subject at all times, and we have had arguments concerning it. In the letter which has been introduced in evidence written to Mr. Muir, stating something about a difference of opinion, that was in reference to the consolidation of the companies. I do not know anything about bookkeeping and do not know the difference between a ledger and a journal without seeing it marked. I never have made an entry in my life. I would not give a bookkeeper any instructions on an entry unless it would be simply a division of commissions between agents.

I remember a trip into Idaho with Mr. Ferrell but I do not recall any discussion with him in regard to the Empire. I never made the statement to him that I knew there was coal in the Empire. I may have made the statement to the effect that it was not proven ground, but I don't think I made it to Mr. Ferrell.

I did not give Mr. Hill a written guarantee. I

came into the office and had the Michel Coal Mines Company write him and make him the promise as I had, verifying my statement to him. The letter that was written is Defendants' Exhibit 77 for identification and it shows the understanding with Mr. Hill.

DEFENDANTS' EXHIBIT "77" admitted without objection:

I never represented to Mr. Lloyd that these lots were being transferred to the Michel Company. I had no talk with Mr. Lloyd at all. The deal was closed through the mails. The Lloyd subscription to Michel stock was a treasury subscription and I do not know how it got on the books as personal except through error, and I had never had my attention called to it before that the error had occurred. It was not intentional in any manner. The books of the Michel, Empire and Crown have been audited two different times, I believe, by certified accountants and once by Miss Burke. At the time the books were audited by LeMaster & Cannon, we felt satisfied that Mr. Christopherson was not able to handle the books and we asked Mr. LeMaster to select a bookkeeper and he selected Miss Burke.

In reference to the Walter J. Woods transaction, I told him that the stock he was getting was personal and wrote a receipt for him to sign to that effect. The receipt has not been changed or altered

in any way since Mr. Woods signed it. The matter of selling personal stock was fully discussed at the meetings at Walla Walla and Payette and the purpose of this was in order to secure control, fifty-one percent of the stock. The fact that we were making purchases from time to time was discussed. I was asked that question and I always explained it was in protection of the market, and I continued to make purchases after that. I did not represent to any of these people with reference to the railway stock of our own, that the one hundred dollars was going to be turned over to the railway company. It was stimulate the interest of the Empire Company in the railroad, is all. In reference to a statement made to Mr. Bryan in reference to sweetening a sale with Crown stock; that was at a time when I was trying to absorb a large block of Empire that had come onto the market and I was willing to allow some of my Crown stock to go out to induce a trade, to be absorbed; the Crown was spoken of as an investment and the others were the speculations, and that they could mix the two in a trade. In none of these talks that I have had with anyone was anything said about any of this real estate that may have been obtained being used to develop the property. The real estate was not used in the development of the property, but it was used to the good of the company in keeping the market protected from the floating stock.

A letter identified by the witness admitted in

evidence and marked DEFENDANTS' EXHIBIT "221."

Mr. Bass is the one who organized the company; he is an attorney at Victoria.

Mr. Wayland took Mr. Brainerd over the property and discussed the right of way with him. At that time the right of way stakes were set throughout the entire distance. I never made the assertion to Mr. Brainerd that I was taking the deed in my father's name. Mr. Brainerd frankly admits it now, in discussing it. I said nothing about my father being in close touch with the Bank of Montreal. He has not been active in my memory.

At the Payette meeting Mrs. Alden came up to me with Mr. O'Rell and wanted to trade this property that she had there in Middletown, just some vacant lots. I told her that I was very busy. She was insistent and finally I said, "If Mr. O'Rell will go over tomorrow and look at the lots and see it is all right, I will do it." Mr. O'Rell did that and came back and said it was all right. I was still busy, so I sent Mr. Wayland over to the house and I didn't discuss it with Mrs. Alden at all, and the deed was made out in Mr. Wayland's handwriting and is here. In all of the deals with these companies there was never a time that property was taken in exchange for treasury stock.

Deed admitted in evidence without objection and marked "DEFENDANTS' EXHIBIT "223."

I did not say to Mrs. Alden that I would not take five dollars a share for my stock; I had no chance to discuss the property with her. I don't know what was the character of these lots. All we could sell them for was twenty-five dollars.

Exhibit "188" admitted in evidence.

In reference to Plaintiff's Exhibit 187 being a receipt signed by Walter J. Woods, Mr. A. E. Livingston, who signed as a witness was in the office when I made the sale and signed it. I did not tell Mr. Cooper that I was going to use this land and borrow money on it for company purposes. The price of thirty-seven and a half cents to Mr. Havton was discussed at the meeting. I told Mr. Kirk that I believed the Crown veins underlaid the Empire. I had no other information except Mr. Hemphill's statement, the engineer's report and my own ideas. In reference to the representation concerning the right of way made to Mr. Kirk, that is covered in a letter which went out to all stockholders, which dealt with the right of way and said that we had most of the right of way, which was a fact. We had all of the right of way except 4.8 miles out of the twelve.

Defendants' Exhibit "193" is in my handwriting, except the signature and it is in the same condition now as it was when it was signed.

Q.—Has anything at all considerable been realized out of the notes? A.—No, nothing particular.

- Q.—And the Mills Syndicate Coal Mine stock, anything realized out of that? A.—No.
  - Q.—And the Preston Farms interest, \$52,937.00?
- A.—We got about ten thousand dollars out of that with some stock.
- Q.—The Riparia Orchard Tract, \$45,000.00; anything realized out of that?
  - A.—Lost \$13,000.00 besides the property.
  - Q.—The property is gone?
  - A.—Yes, foreclosed and sold.
- Q.—The other real estate at \$92,000.00; what has become of that?
- A.—I think Mr. Wayland has one that is worth about five hundred dollars left; I haven't any out of it.

A letter identified by the witness admitted in evidence without objection and marked DEFEND-ANTS' EXHIBIT "224."

Q.—And the moneys that have been raised by these different companies, so far as it has been disbursed through your office, Mr. Belden, how has it been disbursed with reference to the development work on these properties?

A.—Used absolutely for it.

WHEREUPON an adjournment was taken until 10 o'clock A. M. 1914, at which time court duly

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convened pursuant to adjournment; present as before.

- R. G. BELDEN resumed the stand and on cross examination by Mr. Garrecht, testified as follows:
- Q.—I believe when I finished the other day my part of the cross examination we were talking about notes. I understand in this exchange of notes, Mr. Belden you took the short time notes. Is that right?

A.—Why, we were advancing cash and in order to get our cash back usually took the short time notes; not always. I don't recall any notes that were secured. There may have been some. I recall the G. W. Smith note. It was not secured at the time we took it but later on it was secured. We kept one of them and two went to the company. Mr. Smith secured the note I had. I do not recall a case where notes were taken that were secured by the stock that was issued, as collateral security.

We represented that we did not have 4.8 miles of the right of way; we did not represent that we had it all.

A letter admitted in evidence and marked PLAIN-TIFF'S EXHIBIT "235."

I presume I may have written the letter to which you refer dated November 18th, 1910, to Miss Mary K. Moriarity, but that does not say that I have acquired all the right of way; and I presume that letter was written just at the time Mr. Wayland and

Mr. Butterfield were negotiating and did have an agreement on the balance of the right of way.

Q.—I want to call your attention to Plaintiff's Ex. 65, stub certificate No. 698 issued to Mary K. Moriarity transferred from International Development Company and ask you if that is correct?

A.—That comes from the International all right and it may be the one. I am not disputing that, but that can't be a transfer.

Q.—The books in evidence show that the cash did go to that company, does it not?

A.—Yes, sir, that is our commission. I don't deny but what the International got the cash on the Mary Moriarity sale. That was the distinct understanding.

The various companies owed the International Development Company for money advanced and the Empire still owes the International right now. I have not looked up in regard to the Michel but it is more than likely they do. That was cash advanced, not notes, that the Empire owes us. We always turned notes over in exchange for stock that we had sold. I don't think you can show in any way that it was our general practice to turn over notes in a larger amount than the stock we got so that these companies would be owing us right along, because that was not the intention, and that would be worked out as nearly as the bookkeeper could work it. If it did happen I would not say that the bookkeeper would be at fault because some-

times we could not divide the notes. I have testified that we paid as high as thirty percent for the sale of personal stock, and the agent making the sale got the commission. Mr. Butterfield and I had discussed with the Bank of Montreal the matter of the bond issue.

PLAINTIFF'S EXHIBIT No. "226" admitted in evidence without objection.

It was immaterial to the stockholders whether it was bonded in this country or a foreign country, but the question whether a bond issue under these conditions was desirable to the stockholders.

Q.—Then as a matter of fact the eastern stockholders never did control unless they had somebody in the west to stand in with them; is that correct?

A.—There was never an issue on the control until the break with Mr. Ferrell and Mr. Hemphill and a few of the other western stockholders, and in that event the east had the control; that is, we would speak of it as the eastern stockholders having control, the eastern faction.

Q.—Now, wasn't that control brought about by Mr. Hemphill and Mr. Butterfield both voting with the east?

A.—Mr. Wiseman also voted with the east and Mr. Arlbury, he was a western stockholder.

Q.—If the western stockholders voted together the east could not have had control?

- A.—I think not.
- Q.—Now, some of the stock of the Crown Coal & Coke Company was held in the name of W. A. Hemphill and L. Whitney. Didn't that stock belong to the International Development Company?
  - A.—Some of it did.
- Q.—Who did the other part belong to? A.—Mr. Hemphill made the arrangements and I am not familiar with that.
- Q.—Then what he stated would probably be correct?
- A.—I wouldn't take exception to Mr. Hemphill's testimony on that.
- Q.—Who owned the stock that was issued in the name of Steve Brown? A.—The International Development Company finally owned it.
- Q.—They had it under control all the time after it was issued, didn't they, in their charge? A.—Practically so, Mr. Garrecht.
- Q.—That was one hundred thousand shares of the original issue, was it? A.—Yes.
- Q.—I now show you Plaintiff's Exhibit 75 for identification and ask you if that was sent out from your office by the Inland Surety Company?
- A.—I was not in the city at the time that that report came in and at the time that that slip was printed.

- Q.—What date was it it was sent out, if you recollect?
- A.—As near as I can state probably it was sent out by the letter that you have produced here of February 14, 1906. I was at Hartline and would get in about one o'clock in the afternoon.
- Q.—You say you think you were in Hartline on the 14th of February, 1906?
- A.—No, I say I arrived from Hartline at one o'clock on the 12th, and your correspondence here shows that was sent out on the 14th. It couldn't possibly have been reproduced and in the mail within that time. I got back about one o'clock the 12th.
- Q.—Now, I will ask you as a matter of fact were not these things disseminated from your office with your knowledge?

## A.—No.

- Q.—I will ask you to examine this memorandum marked "Important" and signed R. G. Belden, and ask you if you left that memorandum in your office?
- A.—Yes, I did. That is along the same line as I just explained to you. The commission went to Faires.

A letter identified by the witness admitted in evidence without objection and marked PLAINTIFF'S EXHIBIT "227." Other letters identified by the witness marked PLAINTIFF'S EXHIBITS "228" and "229" admitted without objection.

Q.—You also stated, I believe, that you wrote out and got proxies from different stockholders?

A.—We did at times, yes. A man might send two Empire proxies and one of them would be filled in with the name of the Crown, in the office.

PLAINTIFF'S EXHIBIT "230" admitted without objection.

I have always been interested in who were the directors. The committees were in the habit of calling a meeting and selecting their names and I would vote for the men that they would select. In fact, Payette would vote for the men that Walla Walla selected, and Walla Walla would vote for the man that Payette selected.

Q.—You wrote a letter like this to Mr. C. A. Bryan—(Referring to letter of December 20th, 1909)?

A. I never wrote that and that would not be proper. I think I was along the time he went up to the property. I planned to get everybody that we could to visit the property but he did not go according to a plan at that time.

A letter identified by the witness admitted without objection and marked PLAINTIFF'S EXHIBIT "231."

A letter identified by the witness admitted in evidence without objection and marked PLAIN-TIFF'S EXHIBIT "232."

I don't know as we ever had control of the Empire, that is, by our stockholdings.

A letter admitted in evidence without objection and marked PLAINTIFF'S EXHIBIT "233."

Another letter admitted without objection and marked PLAINTIFF'S EXHIBIT "234."

A letter admitted in evidence without objection and marked PLAINTIFF'S EXHIBIT "235."

Two other letters admitted in evidence without objection and marked PLAINTIFF'S EXHIBITS "236" and "237."

I always aimed to have a director of the company with the salesmen. I did not always have one with me. In most cases I did.

Three letters identified by the witness admitted without objection and marked PLAINTIFF'S EXHIBITS "238," "239" and "240."

I am not familiar with the 97 shares of railroad stock that were given as a bonus with Empire stock. I assisted in making the deal with Mrs. Inman, but Mr. O'Rell was the one that introduced me. I did not go to her home but as I remember it she had a little bakery or something of that kind and I went into the place there with Mr. O'Rell. I did not tell her that the Empire stock was as good as the Crown. I remember very distinctly selling the last one hundred shares to Mrs. Harrington. I never told her that the Empire claim was a solid mass of coal.

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## REDIRECT.

Q.—And in this letter where you speak of fifty thousand shares of the Michel that has been sold and twenty-five thousand Crown, what is meant there or what was the purpose of telling him to mix considerable Michel with the Crown?

A.—Simply that I had accumulated that; it had come in the open market and consequently I had to work that off to protect the market further.

On RECROSS EXAMINATION by Mr. Garrecht he testified as follows:

- Q.—You don't know, never did know, and never kept track how much your personal sales were?
  - A.—That would be an immaterial point.
- Q.—Wasn't the method that you employed to sell out all your own personal stock and then replace it with stock that you purchased with notes from the treasury?
- A.—Such a condition never existed. I kept pretty close track of the stock sales but not of the entries. Miss Covington always kept track of the notes, had a note record that I could refer to if I wanted to see about an individual note. I think the prospectus is very clear in regard to the figures about the Michel and do not think there is any reason why it should mislead anybody. The Michel mine is a large producing property and we did not pretend to even have a camp equipment at that time.

PLAINTIFF'S EXHIBITS "241" and "242" identified and admitted in evidence without objection.

On REDIRECT EXAMINATION by Mr. Williams he testified:

The Michel mine that I spoke of belongs to the Crow's Nest Pass Company. The town is named Michel and we speak of that as the Michel Mine of the Crow's Nest Pass Coal Company. In regard to the letter about reducing the force after the property was visited, we realized at that time that the force had to be reduced and it was going to be taken up with the board. They were simply going up there and the men would verify the statement we had already made that there were so many men, and from that time on it would be reduced. As stated there, we would not be able to exceed so much any month.

(Witness excused.)

ANDY GOOD, called and sworn as a witness on behalf of the defendant, on direct examination by Mr. Williams testified as follows:

My name is Andy Good and I reside at Crow's Nest, British Columbia, and have resided there for the past sixteen years. That is about from six to twelve miles from the Empire and the Michel. I am acquainted with both the defendants and Mr. Lamereaux. I wrote the letters marked Defendants' Exhibits for identification No. 81 and 82 and wrote

both of them at the request of Baptiste Lamereaux from his dictation and at his request and on the date they bear.

The letters admitted in evidence and marked DEFENDANTS' EXHIBITS "81" and "82."

Prior to that time I drew a sketch of the coal claims from Mr. Lamereaux's dictation, probably about sixty days before these letters were written. He represented to me six veins from two and a half feet to twenty feet. During the time since sometime in T905 both Belden and Wayland have spent considerable time in that country every year.

On CROSS EXAMINATION by Mr. Garrecht he testified as follows:

I do not know with reference to what property the sketch was made.

(Witness excused.)

W. B. SHAFFER, called and sworn as a witness on behalf of the defendants, on direct examination by Mr. Williams, testified as follows:

My name is W. B. Shaffer and I reside in the city of Spokane and am employed at 6 Post Street, in the Kronenburg Liquor Store, as a barkeeper. I was there on the evening of April 20th of this year. On the evening of that day Mr. F. L. Ferrell came into the saloon and said in substance as follows:

"That God damned Belden don't know me.

Before they are through with me they will know me for God damn them, I am out here to send the sons of bitches to the penitentiary."

On CROSS EXAMINATION by Mr. Garrecht he testified as follows:

At the time he said this he looked as though he had had a few drinks; he appeared to be intoxicated, he had a few "shots" or he wouldn't have talked as loud as he did.

(Witness excused.)

A. E. WAYLAND, one of the defendants, after being first duly sworn, testified on direct examination by Mr. Williams as follows:

My name is A. E. Wayland and I am one of the defendants in this case. I am thirty-six years old and I have resided in Spokane since 1903. Mr. Belden and I formed the R. G. Belden Company, a co-partnership and went into the real estate business. Later we formed the R. G. Belden Company. Our principal business was handling Lidgerwood lots for Dr. Byrne. I then became one of the incorporators of the International Development Company. Prior to that time I had never had any experience in coal mining. I first went into the coal fields of British Columbia in the spring, in March of 1906 with Mr. Belden. We went into the Michel section, went to a cabin of Mr. Lamereaux's up by Michel Creek on the north fork of Michel Creek up where the properties now are. The time I

acquired my first knowledge in regard to the coal showing was when I made this trip in March of 1906. The Crown was organized the following fall, I believe in August.

I know F. B. Green, the engineer. Mr. Green and Mr. Hower went up there in the spring of 1910 for the purpose of making a joint report. Mr. Hower had been over the property the previous August and had seen all the veins. We were on a hunting trip. As we went over the property I picked up some sandstone which was identical with the strata overlaying the top measure on the Empire, and when we got up on the mountain and found the standstone overlaying the top coal vein, the large coal vein on the Crown mountain, we compared the sandstone and I asked Mr. Green what his opinion was in regard to coal on the other side, on the Empire and he remarked that any damned fool would know that; and he went on to explain his theory. Prior to the organization of the Empire I had a talk with Mr. Gamble and he explained to me the formation as I have explained it here only he told me that the coal, the same veins of coal overlaid both sides of the section. I believe that to be correct. I never represented to any proposed investors that coal had been found in place on the Michel. We were trying to get them to go up there and if you misrepresent the mine before he goes, you are sure not to sell him after he gets on the property. As to the Empire I also told them

the exact condition. When I took men in there to examine the mine I showed them everything I could think of. I asked them if there was anything else they wanted to see, and if some fellows came up who were a little suspicious and wanted to stay another day I would stay up with them and we would go anywhere. We always encouraged people to go in and look over the property. As to the right of way, we never represented anything other than the exact situation, went into details and usually showed a map and plat, showed them the cross section stakes and explained it all to them.

In regard to the subscription of twenty-five dollars made by Mr. Lloyd for Michel stock, that was supposed to be treasury stock. The books show now as I understand that the mistake was made, but I never knew of it. A small transaction like that it was never called to my attention, it was handled entirely by the bookkeeper. I was not aware of this mistake until I heard it here. It was not intentional in any manner.

These floating stocks were also offered to others to take them if they wanted them. After we acquired these stocks we were unable to hold them because we did not have the necessary capital. I never knew of any instance where property was taken in exchange for stock, where it was represented that the property was taken for the companies and I never heard of Mr. Belden making such statements while I was with him. I never at any time

in making sales of stock represented to anyone that it was treasury stock when it was personal, nor did I ever hear Mr. Belden do so. I was in the office when the Walter J. Woods deal was made, the ten thousand dollar note. I heard the discussion. Mr. Woods and I went over the property and I had returned with him, and Mr. Belden closed the deal but I was present in the office. We showed him the commission of the railway, the charter, leases, licenses and the crown grants. I heard the discussion as to the kind of stock he was getting and it was personal stock and he signed a receipt for it, and I was there when the receipt was signed and saw him sign it.

I closed the deal with Mary J. Alden. I never heard anything said to the effect that the stock of the company would not be sold for five dollars a share. I told her it was personal stock.

With reference to these different companies, prior to the election of directors in the different companies I never knew of myself or Mr. Belden having any arrangement with the people who were elected trustees that they would act with us. I had not formed any combination at all to control the meeting of the stockholders of the Crown which was held in January, 1910, where there was a fight for control and with our own stock we did not have control.

CROSS EXAMINATION by Mr. Garrecht:

The Inland Surety Company was a co-partnership and after that co-partnership was dissolved there is a letter here signed Inland Surety Company with my name underneath. Oftentimes Mr. O'Brien or Mr. Hemphill or Mr. Belden would possibly write a letter or possibly myself, just as a matter of getting facts together and then the letter that was sent out might be taken from this separate letter that had been compiled. Just why my initials are on there I haven't the remotest recollection. I do not think you have any letters with my signature on but what I am willing to say that I signed them. I would say that was a correct statement according to my understanding at that time.

MR. GARRECHT.—We will offer that in evidence.

THE COURT.—It will be admitted.

The letter and newspaper clipping admitted in evidence and marked PLAINTIFF'S EXHIBIT "243" and read to the jury.

Q.—Now, Mr. Wayland did you also send out letters with a sort of a sketch of resolutions that were to be offered at meetings that were to be held? A.—I did.

Q.—I will ask you if you sent this letter of January 21st, 1911, to Mr. Simard?

A.—That is my signature, my dictation mark on it.

Q.—That letter was sent out, was it?

A.—I couldn't tell you that; I never mailed the letters.

Q.—You dictated it, though?

A.—Evidently I have signed it. I haven't read it over yet but I probably dictated it, yes.

MR. GARRECHT.—I offer it in evidence.

THE COURT.—It will be admitted.

The letter identified by the witness admitted in evidence and marked PLAINTIFF'S EXHIBIT "244."

Q.—Well, from the time that you located the Crown most of the efforts put forth were in developing the Crown, were they not?

A.—No. No the efforts the following year was put forth on the Michel and on building the wagon road.

Q.—Now, as a matter of fact, Lamereaux never wrote you anything about a twenty foot vein, did he?

A.—No, he wrote that he found a vein of coal and I always understood, that is from Mr. Belden and Mr. Hemphill, that it was a twenty foot vein and it was generally supposed among prospectors that a twenty foot vein extended over on this side of the mountain.

The letter of May 21, 1910, written to Mr. R.

G. Belden, "A.E.W.-R.C." in the lower left hand corner, sounds very much like my dictation.

MR. GARRECHT.—We offer it.
THE COURT.—It will be admitted.

The letter admitted in evidence and marked PLAINTIFF'S EXHIBIT "245."

A.—Why, the Empire needed the money worse at that time; and the reference to Mr. Butterfield there—I was up with Mr. Butterfield and Mr. Wright, Wright and Palmer, went over the property and from the way Mr. Butterfield handled the situation—he refused some proposition that I made—I suspected that he was on both ends of the deal, both with Wright and Palmer and with the Crown Company, and I referred to it in this letter here to Mr. Belden.

Q.—Now, you accompanied Mr. Belden to Walla Walla, Freewater, and Payette when you were having these meetings, made talks with Mr. Belden?

A.—Yes, in 1910 I was with Mr. Belden there. Other meetings were held in 1909. We held a meeting in Payette in 1910 but other meetings I was not present; I was at the Ransom Building at Walla Walla with Mr. Belden.

Q.—Did you make a talk on geology at Freewater at any time?

A.—Yes, and Payette in 1909.

## RE-CROSS-EXAMINATION.

Q.—I will ask you if you dictated that letter to Mr. Dimmick? A.—Yes, sir.

Letter admitted in evidence and marked PLAIN-TIFF'S EXHIBIT "246."

RE-DIRECT EXAMINATION by Mr. Williams:

Q.—What was the reason that you desired Dimmick to keep the main force of men at work there on the job until these people came up, who were coming up to visit the property?

A.—We had represented there would be so many men at work there and we wanted them to stay there until they got up to see the property.

(Witness excused.)

A. HOBSON, called and sworn as a witness for the defendants, on direct examination by Mr. Williams testified as follows:

My name is A. Hobson, and I reside in Walla Walla County near Prescott Junction. I am engaged in the business of farming. I have been where I am at present for about two years but have been in the country though for several years. I am past sixty-three years old. I am acquainted with Mr. Belden and Mr. Wayland, having become acquainted with them I think in the spring of 1909. When I first met Mr. Belden he came to my house. I am a farmer. I have been an owner of stock in the

Crown, Michel and Empire. I first purchased through Mr. Belden in 1909. At one time I was on the Board in the Empire and later on the Crown. I think I served on the Board of the Empire for about two years at different times. I was never on the Board of the Michel. I never went on the Board of any of these companies under any arrangement or agreement of any kind with Belden or Wayland and while I have been on these boards I have never at any time done anything other than vote my convictions. We would sometimes talk matters over but neither Belden or Wayland tried to coerce me into anything or dictated. I always tried to do what I thought was best for the companies. Neither Belden or Wayland have ever attempted to my knowledge to effect any combinations or anything of that sort further than to give the Board recommendations, which would be among ourselves. I don't remember that I ever heard Mr. Belden represent to any prospective purchasers that coal had been found in place on either the Empire or Michel; I don't think so. He has said that he believed there was coal there. I have never to my knowledge heard him represent that he was selling treasury stock when he was selling personal stock. I always understood it was for personal stock whenever they traded for real estate or property like that. I am the same A. Hobson who acted for these coal companies on the question of dictating a division of the notes after sales were made.

There was a time or two I think I helped to buy them up. Mr. Belden sent me a list down to Walla Walla of the notes and I approved and returned them. I haven't any complaint to make of the division. I thought it was fair, so far as I was able to judge in the matter.

On CROSS EXAMINATION by Mr. Garrecht he testified as follows:

I own some Empire stock and secured shares of the railroad stock with it. I don't remember whether there was anything said as to what was done with the money derived from the sale of the railroad stock. I don't think there was anything in regard to that. For each five hundred dollars worth of Empire I got a share of railroad stock. My understanding was that a portion of the five hundred dollars was to go into the railroad.

REDIRECT EXAMINATION by Mr. Williams he testified as follows:

My understanding was that the one hundred dollars to pay for the railroad stock was to be turned over to the railroad. My purchases were both purchases and trades; principally purchases.

(Witness excused.)

G. W. BUSH, called and sworn as a witness on behalf of the defendants, on direct examination by Mr. Williams, testified as follows:

My name is G. W. Bush, and I live in Spokane

and am engaged in the real estate business. I am acquainted with both defendants. From December, 1910, until March, 1911, I acted as salesman for these stocks in the vicinity of Waitsburg and Dayton. I was present at times when Mr. Belden was making sales. At none of these times did I ever hear Mr. Belden make representations that coal had been found in place on the Empire or the Michel or that the right of way had been entirely secured for the railroad. I know of some sales that were made in the way of trades and in such cases it was represented as personal stock. I know of no exception to that rule. I do not recall of any representations having been made in regard to the railroad stock in my hearing. I have been over the property I think twice, once with prospective purchasers. At that time the property was fully shown and I do not know of any representations having been made at that time about the right of way having been entirely secured.

On CROSS EXAMINATION by Mr. Garrecht he testified as follows:

I was engaged in selling treasury stock and in making these personal stock trades when they came up.

(Witness excused.)

H. I.-HODGE, recalled on direct examination by Mr. Williams testified as follows:

MR. WILLIAMS.—I think that you failed to

give me the figures the other day about the Michel, the amount of this stock.

MR. GARRECHT.—The stock which was resold, I believe?

MR. WILLIAMS.—Yes, how much of it was the original promoters?

MR. GARRECHT.—I have that; that was given by Mr. House and how much was purchased afterwards by the International Development Company?

A.—The promoters and bonus stock issue was 425,000 shares \$1500.00, includes 97,430 shares \$14,195.97.

MR. WILLIAMS: I don't care about the amounts.

A.—In shares it is 97,430.

Q.—Or a total of how much? A.—A total of 522,430.

Q.—And I have forgotten what Mr. House's figures are if you have got it there?

A.—His figures and sales were 993,532 sharés.

CROSS EXAMINATION by Mr. Garrecht:

Q.—Where did you get your figures, Mr. Hodge?

A.-From Mr. House, Mr. House's figures.

Q.—Well, now, how do you figure that 425,000 shares were personal when he gave it as 953,000?

A.—They were personal—

THE COURT.—The witness has distinguished between re-sales and sales of original stock, as I understand it.

A.—This stock was issued at a nominal price to this syndicate or promoters, 425,000 shares.

Q.—You are talking about what company?

A.—Talking about the Michel.

Q.—Do you know whether there were any promoters in the Michel?

THE COURT.—They were the persons to whom the stock issued on its incorporation, as shown by the minute book.

MR. GARRECHT.-Q. Do you know that?

A.—Why, absolutely no. These were issued at a nominal amount.

REDIRECT EXAMINATION by Mr. Williams:

Q.—Mr. Hodge, did you look at the minute book as a verification. A.—Verify this stuff?

(Witness excused.)

J. H. HEMPHILL, recalled on behalf of the defendants, on direct examination by Mr. Williams, testified as follows:

I attended the meeting of these different coal companies from time to time even after I ceased to be connected with the International Development

Company. I know I attended some of the Crown meetings. I do not think in any of these meetings that I attended I ever saw Mr. Belden or Mr. Wayland do anything in the way of controlling these meetings except as usual with stockholders. While I was serving on the board and after I had ceased to be with the International Development Company I did not have any agreement or understanding to vote or act as Belden and Wayland wanted me to. At the meeting in January, 1910, there was some disagreement between us and I tried to get control of the property at that time and had done something for the purpose of forming a combination for that purpose. I think I was a trustee in the Michel the first year, but not after I had ceased to be with the International Development Company.

On CROSS-EXAMINATION by Mr. Garrecht, he testified as follows:

I am forty-three years of age. At the meeting held in January, 1910, I think Mr. Wayland attempted to vote one hundred and fifty thousand shares of stock but we protested, and Mr. Graves was called in to decide whether it could be voted or not, and I think he said it couldn't be voted. I don't think it was. I was on the credentials committee which reported against the stock being voted.

On REDIRECT EXAMINATION by Mr. Williams he testified as follows:

In the early days of these properties both Mr. Belden and Mr. Wayland were up there a great deal.

(Witness excused.)

RETHA COVINGTON, recalled on direct examination by Mr. Williams testified as follows:

In regard to the Lloyd transaction of twenty-five dollars, I do not know how it got into the International Development Company account except that it is an error on my part. We were issuing a great deal of stock at that time and it must have been an error because all others were issued from the treasury of the Michel. It was not an intentional mistake and no one told me to make the error. While I have been there in the office I have been familiar with the business that has been done and the course of conduct in the office, and have heard a great many conversations between the sales department and prospective purchasers. I never at any time knew of Mr. Belden or Mr. Wayland representing that coal had been found in place on either the Michel or the Empire. I have heard them talking about it, however, with prospective purchasers in the office in regard to the coal and I have heard Mr. Belden make statements to prospectors that he thought there was coal on this property and that he was sure the same veins of coal underlaid the Empire that were in the Crown. The different meetings of these various companies were generally held in some of the offices that we occupied

and I was nearly always present but I never heard any representations made other than along the same lines I have just told of.

I saw this statement signed by Mr. Woods immediately after it was signed there in the office but I was not in the room when it was signed.

- Q.—While you were there, Miss Covington, would the stockholders at any time come to you for information?
  - A.—Yes, sir, a good many times.
- Q.—And what was your attitude with reference to trying to give the fact correctly?
- A.—I certainly tried to give the facts just as I knew them and thought they were; tried to make the statements whatever I made perfectly sincere.

On CROSS EXAMINATION by Mr. Garrecht she testified as follows:

I am a stockholder and officer of the International Development Company and am the only other officer and stockholder besides the defendants.

(Witness excused.)

MR. WILLIAMS .-- The defendants rest.

WHEREUPON the following testimony was offered in rebuttal.

LUCY SHEPHERD, recalled as a witness for the Government, on direct examination by Mr. Garrecht, testified as follows: I have been previously sworn. I was at one time bookkeeper for the International Development Company.

Q.—While you were in their office were there any personal stock sales that the International Development Company made from their personal certificates which were sold for cash or notes?

MR. WILLIAMS.--I object to that as not rebuttal.

THE COURT.—She may answer the question. I don't know what it is leading up to.

(Defendants except and exception allowed.)

A.—Yes.

Q.—I now show you Plaintiff's Exhibit "24," cash book of the International Development Company at page 42 and call your attention particularly to the entry of March 19, 1910, and ask you if that is in your handwriting?

A.—Yes, sir, that is in my handwriting.

Q.—What is the entry, Mrs. Shepherd; just read it?

A.—125 shares Michel stock twenty cents, amounting to \$25.00 in the name of Lloyd.

Q.—Had you any instructions to make that entry, Mrs. Shepherd?

MR. WILLIAMS.—I object to that as not rebuttal, and incompetent, irrelevant and immaterial.

THE COURT.—Objection overruled.

(Defendants except and exception allowed.)

- A.—I never made any entries regarding the stock sales unless I had instructions.
  - Q.—Whom did you have these instructions from?
- A.—They came from either Mr. Belden or Mr. Wayland. Mr. Wayland was supposed to be in charge of the books.

On CROSS EXAMINATION she testified as follows:

(Witness excused.)

B. L. THORN, called in rebuttal, testified as follows:

DIRECT EXAMINATION by Mr. Garrecht:

- Q.—What is your name, please? A.—B. L. Thorn.
- Q.—Where do you live? A.—Hosmer, British Columbia.
- Q.—What is your business? A.—I am a mining engineer.
- Q.—Were you ever with the Canadian Pacific or the Pacific Coal Mines Companies? A.—I have been with the Canadian Pacific Coal Mining interests under various names and designations since 1913.
- Q.—Are you acquainted with Mr. Belden, the gentleman sitting at the end of the table? A.—I

believe that I met Mr. Belden in 1907 for a very short time.

- Q.—Did you have any business dealings with Mr. Belden relative to the right of way of a railroad? A.—I had a conversation with him.
- Q.—What year was that? A.—I believe it was 1907, to the best of my recollection.
- Q.—At that time did you have any conversation with him relative to the coal mine properties known as the Empire and Michel?

MR. MILLER.—I object to that as not rebuttal. THE COURT.—Answer yes or no.

A.—No.

MR. GARRECHT.—Q. Did you ever tell Mr. Belden that in your opinion the coal veins from the Crown mountain extended over to the Empire and the coal veins from the McInnis property extended over to the Michel?

A.-Did not.

Q.—Did you ever tell him that you believed the Empire property or the Michel property to be valuable coal property? A.—I did not.

MR. GARRECHT.-Take the witness.

MR. WILLIAMS.--That is all.

(Witness excused.)

WHEREUPON the taking of testimony was closed.

MR. MILLER.—We desire to renew the motion which we made at the close of the Government's case in chief.

THE COURT.—That will not consume any time. The motion is denied.

MR. MILLER.—If your honor will permit the record to show the motion which we made is renewed.

THE COURT.—Yes.

(Defendants except and exception allowed.)

WHEREUPON an adjournment was taken until May 2nd, 1914, and thereupon the case was argued by the respective counsel and thereafter the court instructed the jury.

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

Charge to Jury.

GENTLEMEN OF THE JURY:

The indictment in this case was returned under Section 215 of the Federal Criminal Code, approved March 4, 1909, which so far as material to our present inquiry reads as follows:

"Whoever having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises \* \* \* shall for the purpose of executing said scheme or artifice or attempting so to do, place, or cause to be placed, any letter, \* \* \* whether addressed to any person residing within or outside of the United States in any postoffice, \* \* \* to be sent or delivered by the postoffice establishment of the United States," shall be fined or imprisoned, etc.

Here Court read indictment.

The indictment then further charges in three separate counts that for the purpose of executing such scheme or artifice the defendants deposited for mailing and delivery in the United States postoffice three certain letters, copies of which are set forth in the several counts.

Under this statute two matters of fact must be charged in the indictment and established by the evidence at the trial. First, that the defendants devised a scheme or artifice to defraud; and, second, that in carrying out such scheme or artifice to defraud the defendants deposited or caused to be deposited a letter or letters in the postoffice establishment of the United States.

I will at this time define to you the different terms used in the statute and in the indictment.

"To devise" means to form a scheme; to lay a plan; to contrive. A "Scheme" is a design or plan formed to accomplish some purpose. An "artifice" is an ingenious contrivance or device of some kind, and the term as used in this statute is equivalent to "trick" or "fraud." To "defraud" implies or includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence generally imposed, and are injurious to another, or by which an undue and unconscionable advantage is taken of another. It means to wrongfully deprive one of something he already has and not of mere expectations excited by promise of future "Fraudulent pretenses," "representations" or "promises" mean such fraudulent representations of an existing or past fact by one who knows it not to be true as are adapted to induce the person to whom they are made to part with something of value. False pretenses or representations may relate to quality, quantity, nature or other incidents or attributes of articles offered for sale whereby purchasers relying on such false representations are defrauded. While in negotiations for the sale of property statements may be mere expressions of opinion by which the seller seeks to enhance the price of the property offered for sale, and justifiable, yet when they are made and intended as the assertion of a fact material to the negotiations as a basis on which sales are to be made, if the representations be false, and known to the seller to be so, the seller is guilty of the offense

if he thereby induces the buyer to part with his money or property.

The letters must be deposited in the postoffice establishment for the purpose of executing the scheme or artifice to defraud or attempting to do so, but it is not necessary that the letter or letters mailed be of a nature or character to be effective in carrying out the fraudulent scheme or device. It is enough if, having devised a scheme to defraud, the defendants, with a view of executing it, deposited in the postoffice letters which they though might assist in carrying the scheme into effect, although in the judgment of the jury they may be wholly ineffective for that purpose.

The devising of a scheme or artifice to defraud is an act of the mind; it of necessity involves an intention to defraud. The devising of such a scheme and the evidence of such an intent may be shown by the acts and declarations of the parties concerned and by the attending circumstances as well as by direct evidence. Whether such an intent has been proved in this case is a question of fact for your determination. As observed by the Supreme Court of the United States: Experience shows that positive proof of fraudulent acts is not generally to be expected and for that reason among others the law permits a resort to circumstances as a means of ascertaining the truth. And in such cases great latitude is allowed by law to the acceptance of indirect or circumstantial evidence, the said of which is constantly required

not merely for the purpose of remedying the want of direct evidence but also to supply protection against imposition. Whenever the necessity arises for a resort to circumstantial evidence, either from the nature of the inquiry or the failure of direct proof, objections to testimony on the ground of irrelevancy are not favored for the reason that the force and effect of circumstantial facts usually and almost necessarily depends upon their connection with each other. Circumstances altogether inconclusive if separately considered may, by their number and joint operation, established or corroborated by minor coincidences, be sufficient to constitute conclusive proof; and where fraud in the purchase or sale of property is in issue evidence of frauds of like character committed by the same parties, at or near the same time, is admissible. Its admissibility is placed on the ground that where transactions of a similar character, executed by the same parties, are closely connected in point of time the inference is reasonable that they proceed from the same motive. The case of fraud as here stated, is among the few exceptions to the general rule that other offenses of the accused are not relevant to establish the main charge. In order to constitute a scheme and artifice to defraud it is not necessary to show that the defendants intended to defraud every person with whom they might have dealings, or that their entire business was a fraud; neither is it necessary to show or prove that the scheme or artifice was developed all at one

time. It may have been formed gradually, but in order to constitute the scheme or artifice mentioned in the statute it must all have been formed prior to and be in existence at the time of the commission by the defendants of the overt act of depositing the letter in the postoffice.

But while circumstantial evidence is admissible and competent to establish the fraudulent intent it is equally admissible and competent for the purpose of establishing good faith and honesty of purpose of the non-existence of a fraudulent intent, and it is for you to say in this case from all the facts and circumstances whether the defendants devised a scheme and artifice for the purpose of defrauding those with whom they might deal, as charged in the indictment. The defendants are not on trial for evolving or devising an improvident or impractical scheme, even though you should find their plan to be such, nor are they on trial for mere errors of judgment. They are on trial for a criminal offense, and an essential element of that offense is an evil or criminal intent which it is incumbent on the government to prove to your satisfaction and beyond a reasonable doubt. And where circumstantial evidence is relied on the circumstances themselves must be proved to the satisfaction of the jury and beyond all reasonable doubt; and when so proved they must not only be consistent with the main fact in issue, namely, the guilt of the defendants, but they must be inconsistent with every other rational hypothesis. Testimony has been offered here tending to show acts committed or declarations made by each of the defendants, and I will now instruct you as to the circumstances under which acts committed or declarations made by one defendant may be used against the other. Ordinarily a person is only amenable to a criminal law for his own acts and his own conduct and not for the acts or conduct of others. There are, however, two well recognized exceptions to this rule. One is where two or more persons form a conspiracy to commit a crime and the other is where one person aids, abets, counsels, commands, induces or procures the commission of a crime by another. A conspiracy is generally defined as agreement or combination between two or more persons to commit some unlawful act or to commit some lawful act by unlawful means. Such a combination or agreement is usually proved by circumstantial evidence. All the text books agree that the evidence in proof of a conspiracy may be and from the nature of the case generally must be circumstantial. All concerted action to violate the law is secret and is ordinarily shown by separate independent acts tending to accomplish the common design. The common design is the essence of the charge and to prove it it is not necessary to prove that the parties came together and actually agreed in terms on that design and to pursue it by common means.

The jury will be justified in inferring the existence

of a conspiracy when the government satisfies them beyond a reasonable doubt by the testimony of credible witnesses that the two parties charged aimed by their acts to accomplish some unlawful purpose or object—one performing one part and another another part of the same so as to complete it although they may never come together to concert the means or to give effect to the design; nor is it necessary that the conspiracy should originate with the persons charged. Every one acting in a conspiracy at any stage of the proceeding with knowledge of its existence is regarded in law as a party to all acts done by any of the other parties before or after in furtherance of the common design. But as I have already said, gentlemen of the jury, in relation to fraud, whether the conspiracy is established by direct or by circumstantial evidence, it must be established to your satisfaction and beyond a reasonable doubt before you can find the defendants guilty on that basis or theory. If you find from the testimony beyond a reasonable doubt that the defendants conspired together to commit the offense charged in the indictment then the acts of each defendant in furtherance of the common design are in contemplation the acts of both and binding on both.- And if you find from the testimony beyond a reasonable doubt that either defendant aided, abetted, counseled, commanded, induced or procured the commission of the crime charged in the indictment by the other, then both defendants are equally guilty. But unless you

find beyond a reasonable doubt that there was a conspiracy or that one of the defendants aided, abetted, counseled, commanded, induced or procured the commission of the crime by the other, each defendant is criminally responsible for his own acts and his own conduct if guilty at all.

From what I have said, gentlemen, you will observe that these defendants are not charged simply with perpetrating or attempting to perpetrate a fraud upon an individual or any number of individuals because over such frauds the federal government and this court have no jurisdiction. It is only where a scheme or artifice to defraud has been devised and the United States mails are used for the purpose of executing that scheme or artifice that the crime comes within the federal statute, and both of these facts must co-exist and be found by the jury beyond a reasonable doubt before you can find a verdict of guilty.

The foregoing instructions I trust will be sufficient to guide you in your deliberations. The defendants have interposed a plea of not guilty and this plea places in issue every material averment of the indictment and casts upon the government the burden of proving every such averment to your satisfaction and beyond a reasonable doubt. In this connection I charge you that a reasonable doubt is such a doubt as well cause a reasonable, prudent and considerate man to hesitate or waver in the graver and more important concerns of human life before acting upon

the truth of the matters charged or alleged. This doubt may arise from the evidence or from the lack of evidence. On the one hand you will not be swayed by doubts which are purely imaginery and capricious and on the other hand you must not yield to doubts which are real and substantial. If from a full and fair consideration of all the testimony you can say upon your oaths as jurors that you have an abiding conviction to a moral certainty of the truth of the charge, then you have no reasonable doubt. But if you have no such moral conviction—if you have a doubt for which a reason can be given—you must give the defendants the benefit of that doubt and find them not guilty.

I further instruct you that the defendants are entitled to the opinion and judgment of each individual juror, and so long as any member of the jury entertains a reasonable doubt it is his duty to vote for an acquittal. I do not mean by this that you should be arbitrary or unvielding because you must compromise your differences as best you can and so far as you can consistent with your oaths. I further charge you that every person accused of a public offense is presumed in law to be innocent of the crime charged until his guilt is established to the satisfaction of the jury and beyond all reasonable doubt. This presumption of innocence is not a mere fiction which you may disregard at pleasure. It is a substantial part of the law of the land; it accompanies these defendants throughout the trial and abides with them until its last vestige is destroyed and until their guilt is established by the evidence to your satisfaction and beyond all reasonable doubt. You, gentlemen of the jury, are the exclusive judges of the facts and of the credibility of the witnesses, but the law you will accept from the court. Before reaching a verdict you will carefully consider and compare all the testimony. You will observe the demeanor of the witnesses upon the stand; their interest in the result of your verdict if any such interest is shown; their knowledge of the facts in relation to which they have testified; their opportunity for hearing, seeing or knowing those facts; the probability of the truth of their testimony; their candor or lack of candor, their bias or prejudice, or the absence of either of these qualities, and all the facts and circumstances given in evidence and surrounding the witnesses at the trial. And if you find that any witness has wilfully testified falsely to a material fact you are at liberty to disregard the testimony of that witness entirely, except in so far as he or she may be corroborated by other credible testimony or by other known facts in the case. I further instruct you that no proof has been offered as to the mailing of the letter set forth in the third count of the indictment and as to that count I direct a verdict of not guilty. As to the other two counts it will be competent for you to find either or both of the defendants guilty or not guilty and proper forms of verdict will be submitted to you. I will say in conclusion gentlemen, that the postoffice es-

tablishment of the United States is a public agency created and maintained by the government at public expense for the convenience of all the people. It is important that this agency should not be used for the purpose of promoting fraud and congress has passed laws prohibiting such misuse of the mails. It is the duty of courts and juries to enforce these laws whenever and wherever violated and if you are satisfied from the testimony in this case beyond a reasonable doubt that these defendants have violated the law in manner and form as charged in the indictment you will so find by your verdict. On the other hand, gentlemen, if you entertain a reasonable doubt as to their guilt your duty to acquit is equally plain and mandatory. The government insists upon obedience to its laws but it demands no victims. It asks equal and exact justice at your hands and nothing more; justice for itself and justice for the citizens accused of violating its laws.

You may now retire and consider of your verdict. (Endorsements): Charge to Jury. Filed in the U. S. District Court, Eastern Dist. of Washington, May 2, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

# DEFENDANTS' REQUESTED INSTRUCTIONS.

No. 1.

You are instructed to find the defendants and each of them not guilty upon the first count in the indictment. REFUSED.

## No. 2.

You are instructed to find the defendants and each of them not guilty upon the second count in the indictment.

#### REFUSED.

# No. 3.

You are instructed to find the defendant, R. G. Belden, not guilty upon the first count in the indictment.

#### REFUSED.

## No. 4.

You are instructed to find the defendant, R. G. Belden, not guilty upon the second count in the indictment.

#### REFUSED.

# No. 5.

You are instructed to find the defendant A. E. Wayland, not guilty on the first count in the indictment.

### REFUSED.

### No. 6.

You are instructed to find the defendant, A. E. Wayland, not guilty on the second count in the indictment.

# REFUSED.

# No. 8.

I instruct you that before you can find the defendants or either of them guilty upon either of

the counts in the indictment you must find that prior to the overt acts charged in the indictment, to-wit: the sending or causing to be sent the letters set out in the first and second counts thereof, (if you find they, or either of them, did mail or cause the same to be mailed) that upon sometime prior to said date the defendants conspired and confederated together to commit the wrongful and unlawful acts set forth in the indictment herein, and unless you find, or believe, beyond a reasonable doubt, that said conspiracy was entered into for the purpose of committing the unlawful acts set forth in the indictment, then you will find the defendants and each of them not guilty.

#### REFUSED.

#### No. 10.

You are further instructed that the case upon the part of the Government in so far as relates to whether there are, or are not, commercial deposits of coal on the Empire and Michel properties depends upon the opinion of its expert, and in this connection I instruct you that the defendants cannot be convicted upon the opinion of an expert as to whether there is or is not coal upon said properties and your verdict will not be guilty upon both counts in the indictment.

## REFUSED.

# No. 11.

You are further instructed that unless you find. beyond a reasonable doubt that both the Michel and Empire properties are worthless as far as containing commercial veins of coal is concerned, your verdict will be not guilty upon both counts in the indictment.

REFUSED.

# No. 12.

You are further instructed that before you can find the defendants guilty you must believe that they willfully and unlawfully entered into the conspiracy set out in the indictment for the purpose of defrauding the persons to whom the said letters were sent and others, and that it was a part of the said conspiracy to use the mails in the executing of said fraudulent scheme and device, or having entered into said unlawful and fraudulent scheme and device used the mails in executing the same. These elements of the offense, as well as all others, must be established to your satisfaction and beyond a reasonable doubt.

REFUSED.

# No. 13.

You are instructed that the government has failed to introduce any testimony to the effect that the defendants wrote, or caused said letters set out in the first and second counts of the indictment, to be written, or that they mailed, or caused the same to be mailed, and therefore your verdict must be not guilty as to both of said defendants upon both couts in the indictment.

REFUSED.

#### No. 15.

You are further instructed that no evidence has been offered to show that the letters set out in the first and second counts were to be given any other or different interpretation than they purport to have upon their face and in considering them you will accord them the interpretation or meaning to which they are entitled by a reading thereof.

REFUSED.

# No. 17.

You are instructed that the letter set out in the first count of the indictment if you find the same was deposited by the defendants or caused to be deposited in the United States mail was for the purpose only of effecting a sale of treasury stock of the companies mentioned in the letter, then as to that count you will disregard all evidence introduced in this case with reference to any representations it is claimed by the Government were made to any purchasers or prospective purchasers as to sales made as to whether the same was treasury or personal stock and any and all evidence that may have been introduced with reference to the purpose for which the proceeds realized from railroad shares of stock were to be used.

REFUSED.

# No. 18.

You are instructed that the letter set out in the first count has not been explained in any manner and you can give it only the construction which it

bears upon its face and that is, that it was, if so deposited in the post office, for the purpose of executing a sale of treasury stock of the companies mentioned to John Neiderer and was not for the purpose of executing any sale of the defendants' personal stock or for the purpose of making any sale of railroad stock.

#### REFUSED.

#### No. 19.

You are instructed as to the second count that the letter therein set forth has not in an manner been explained and if you find that the same was either placed or caused to be placed by the defendants in the United States post office, you can only give the said letter the construction which it bears on its face. That construction is that it was a report of the action of a stockholders' meeting of the Empire Coal & Coke Company. There has been no evidence introduced to the effect that any representation contained in said letter was in any respect false and I charge you that there was nothing improper in defendants depositing it in the mail, if you find that they did so, nor does it establish on its face any intention or purpose, of any improper control or manipulation of the said Empire Coal & Coke Company.

# REFUSED.

# No. 20.

You are further instructed with reference to the said second count that there is no evidence showing

that the same was placed in the United States Post Office, if you find it was so placed by the defendants or caused to be so placed, for the purpose of executing any sales of the defendants' personal stock under any representation that any was treasury stock, nor for the purpose of executing any sale of railroad stock and in considering said second count, you will disregard all evidence introduced bearing upon the question of the sales of any personal stock under any representation that it was treasury and any evidence relating to the sale of railroad stock.

#### REFUSED.

#### No. 23.

If you find from the evidence that the defendants did not misrepresent the facts as to the presence or absence of coal on the property referred to in the indictment, you must find the defendants not guilty since it is on this allegation that the indictment is founded, as to both counts.

# REFUSED.

(Endorsements): Instructions Requested by Defendants. Filed in the U. S. District Court, Eastern District of Washington, May 4, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

In the District Court of the United States, for the

Eastern District of Washington,

Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff.

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

# Exceptions to Instructions of Court to Jury.

The defendants jointly and severally, after the instructions were given the jury and before they retired to consider their verdict, excepted to the instructions given by the court and the refusal to instruct as follows:

1. Except to that part of the instructions in which the jury are told that there are only two elements involved in the offense charged, one the scheme and devise to defraud, and the other the use of the mails for the purpose of executing fraud, for the reason that in this case it eliminates a necessary element under the character of evidence introduced by the government, to-wit: The use of the mails or the intent to use the mails, since a part of the evidence introduced related to a time preceding the last amendment to the Act under which the defendants were prosecuted.

- 2. Except to the instructions of the court wherein it is stated "if the representations be false and known to the seller to be so, the seller is guilty of the offense if he thereby induced the buyer to part with his money or property," for the reason that it excludes the necessary element of the use of the mails.
- 3. Except to the instruction following in which the jury were told that where fraud in the purchase or sale of property is in issue evidence of frauds of like character committed by the same parties, at or near the same time is admissible, for the reason that the court at no point instructed the jury as to what were the material elements of fraud to be established by the government in order to establish the offense charged in the indictment, of which it is alleged the letters were in execution, and at no place in the instruction was the jury advised of what the character of evidence was that had been introduced for the purpose of assisting the jury in determining whether fraud was or was not committed, and for the further reason that such evidence is not admissible in a case of this character
- 4. Except to the instructions following in which it is said, "Its admissibility is placed on the ground that where transactions of a similar character, executed by the same parties, are closely connected in point of time the inference is reasonable that they proceed from the same motive," for the same reason stated in the preceding exception, that the jury at no place were told what the material elements of

fraud or scheme to defraud were with which the letters set out in the indictment were used, or the mails were used, nor were the jury instructed as to what evidence or what the character of evidence was which had been introduced in this case for the purpose of establishing the intent or scheme or which was material to be proven by the government in this case.

- 5. Except to the portion of the charge following, to-wit: "The case of fraud as herein stated, is among the few exceptions to the general rule that other offenses of the accused are not relevant to establish the main charge," for the same reason as stated in the two preceding exceptions, and particularly that no where were the jury instructed as to the main charge on which the government was relying or which the government had to establish as a scheme or artifice to defraud.
- 6. Except to that part of the charge as follows: "Testimony has been offered here tending to show acts committed or declarations made by each of the defendants and I will now instruct you as to the circumstances under which acts committed or declarations made by one defendant may be used against the other. Ordinarily a person is only amenable to the criminal law for his own acts and his own conduct and not for the acts or conduct of others. There are, however, two well recognized exceptions to this rule; one is where two or more persons form a conspiracy to commit a crime, and the other is

where one party aids, abets, counsels, commands, induces or procures the commission of a crime by another," for the reason that said charge was not within any of the issues in the case; that there was no conspiracy charged in the indictment, and for the further reason that there was no evidence at all in the record of any overt act of conspiracy, particularly no testimony of any overt act so far as the defendant Wayland was concerned, and in order for there to be conspiracy there would have to be some joint act of two or more parties.

- 7. Except to the portion of the charge following, to-wit: "A conspiracy is generally defined as a crime or combination between two or more persons to commit some unlawful act or to commit some lawful act by unlawful means," for the reason that it was not an issue in the case under the indictment, and further that there was no proof of conspiracy and particularly no proof of any overt act so far as the defendant Wayland is concerned.
- 8. Except to that portion of the charge in which the jury were told "if you find from the testimony beyond a reasonable doubt that the defendants conspired together to commit the offense charged in the indictment, then the acts of each defendant in furtherance of the common design are in contemplation the acts of both and binding on both," for the reason that the question of conspiracy was not an issue in the case, there was no evidence of any overt act of conspiracy, and particularly no evidence of any act

on the part of the defendant Wayland or of any one joining with the defendant Belden, if there was any evidence so far as he was concerned.

- 9. Except to that portion of the charge, "and if you find from the testimony beyond a reasonable doubt that either defendant aided, abetted, counseled, commanded, induced or procured the commission of the crime charged in the indictment by the other, then both defendants are equally guilty," for the same reasons as given in the preceding exception; for the reason that there is no charge in the indictment of conspiracy, no evidence of conspiracy and particularly no evidence of any overt act by either defendant on any question of conspiracy, and particularly as to the defendant Wayland, and for the further reason that there is no issue in this case as to either of the defendants having aided, abetted, counseled, commanded, induced or procured the commission of any such crime, nor was there any evidence of such fact.
- 10. Except to that part of the instruction following, "but unless you find beyond a reasonable doubt that there was a conspiracy and that one of the defendants aided, abetted, counseled, commanded, induced or procured the commission of the crime by the other each defendant is criminally responsible for his own acts and his own conduct if guilty at all," for the same reasons as given in the preceding exception and for the further reason that the government could not rely both upon a question of con-

spiracy and individual acts of each defendant and it would constitute a question of duplicity in pleading.

- 11. Except to the instruction to the jury wherein the court explained that the post office establishment is a public agency created and maintained by the government at public expense and it is important that this agency should not be used for the purpose of promoting fraud, and Congress has passed laws prohibiting such mis-use of the mails, and stated that it was the duty of courts and juries to enforce these laws wherever violated and if you are satisfied, etc., for the reason that the question of intent and purpose of the statute was not an element in the case or material and the purpose and intent as stated by the court was evidenced by no language of the statute itself.
- 12. Defendants further except to the failure of the court to instruct the jury or define the jury's rights with reference to considering the acts or declarations of one of the defendants so far as it affected the other in case the jury failed to find a conspiracy.
- 13. Except to the refusal of the court to give defendants' requested instruction No. 1.
- 14. Except to the refusal of the court to give defendants' requested instruction No. 2.
- 15. Except to the refusal of the court to give defendants' requested instruction No. 3.

- 16. Except to the refusal of the court to give defendants' requested instruction No. 4.
- 17. Except to the refusal of the court to give defendants' requested instruction No. 5.
- 18. Except to the refusal of the court to give defendants' requested instruction No. 6.
- 19. Except to the refusal of the court to give defendants' requested instruction No. 7.
- 20. Except to the refusal of the court to give defendants' requested instruction No. 8.
- 21. Except to the refusal of the court to give defendants' requested instruction No. 9.
- 22. Except to the refusal of the court to give defendants' requested instruction No. 10.
- 23. Except to the refusal of the court to give defendants' requested instruction No. 11.
- 24. Except to the refusal of the court to give defendants' requested instruction No. 12.
- 25. Except to the refusal of the court to give defendants' requested instruction No. 13.
- 26. Except to the refusal of the court to give defendants' requested instruction No. 14.
- 27. Except to the refusal of the court to give defendants' requested instruction No. 15.
- 28. Except to the refusal of the court to give defendants' requested instruction No. 16.

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- 29. Except to the refusal of the court to give defendants' requested instruction No. 17.
- 30. Except to the refusal of the court to give defendants' requested instruction No. 18.
- 31. Except to the refusal of the court to give defendants' requested instruction No. 19.
- 32. Except to the refusal of the court to give defendants' requested instruction No. 20.
- 32. Except to the refusal of the court to give defendants' requested instruction No. 21.
- 34. Except to the refusal of the court to give defendants' requested instruction No. 22.
- 35. Except to the refusal of the court to give defendants' requested instruction No. 23.

# DANSON, WILLIAMS & DANSON, ROBERTSON & MILLER,

Attorneys for Defendants.

(Endorsements): Exceptions. Filed in the U. S. District Court, Eastern Dist. of Washington, May 2, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

### EXHIBITS.

Plaintiff's Exhibit No. "1."

ARTICLES OF INCORPORATION OF R. G. BELDEN COMPANY.

Incorporators: R. G. Belden, A. E. Wayland, & Jas. A. Williams.

Objects: General Realestate and promoting. Executed August 13th, 1905.

Plaintiff's Exhibit No. "2."

Page 10, Minute Book, Michel Coal Mines Ltd., as follows:

"Spokane, Wash., Nov. 25, 1905.

Trustees of the Michel Coal Mines, Limited, Spokane, Washington.

#### Gentlemen:

The undersigned respectfully propose to sell to your Company for the sum of \$1,500,000.00 two certain coal locations in East Kootenai District, British Columbia; the same now being located in the name of J. T. Penn and C. L. Butterfield. We are of the opinion that these coal locations are amply worth the sum of \$1,500,000.00.

If this offer is accepted you may apply the purchase price on said coal locations in payment of our unpaid subscription to your capital stock.

Respectfully,

INTERNATIONAL DEVELOPMENT CO. By R. G. Belden, Pres.

Attest: J. H. Hemphill, Secy.
J. T. Penn,
R. G. Belden,
J. H. Hemphill."

Plaintiff's Exhibit No. "3."

Articles of Incorporation of the International Development Company.

Incorporators: Russel G. Belden, A. Eugene Wayland, and John H. Hemphill.

Objects: Own, buy, sell, etc., coal, oil, gas and other mineral lands, in the United States, British Columbia, and foreign countries.

Capital Stock: \$30,000.00, stock \$1.00 per share.

Executed: April 27, 1905.

Plaintiff's Exhibit No. "4."

Michel Coal Mines, Ltd.

Incorporators: J. T. Penn, J. H. Hemphill, and R. G. Belden.

Objects: Own, lease, buy, sell, bond, promote, etc., coal and other mineral lands in the United States, British Columbia, and foreign countries.

Capital Stock: \$1,500,000.00. Stock, \$1.00 per share.

Executed: November 18, 1905.

Plaintiff's Exhibit Nos. "5" & "6."

British Columbia Mining licenses of C. L. Butter-field, and J. T. Penn.

Plaintiff's Exhibit No. "7."

Partnership Agreement between R. G. Belden, S. W. O'Brien, and J. H. Hemphill. Parties agree

to form a co-partnership, styled "Inland Surety Company," for the purpose of selling Treasury Stock of Michel Coal Mines Ltd., on commission and other business of like nature, and continue for three years. They to receive commission of 20% for selling Treasury Stock of said Michel Company.

By mutual consent the foregoing agreement dissolved March 6th, 1906.

Plaintiff's Exhibit Nos. "8," & "9."

No. "8." Page 15, Minute Book, Michel Company, being record of special meeting of the Board of Trustees, December 4, 1905.

Present: Belden, Penn and Hemphill.

Object: Considering communication from Inland Surety Company, and Michel Company relative failure to authorize Inland Surety Company to sell other stock of the Michel Company than Treasury Stock, and authorizing agreement in plaintiff's exhibit "9."

No. "9." Agreement between Michel Company and Inland Surety Company authorizing latter to sell 500,000 shares of Michel Company's Treasury Stock, on a basis of 20% commission, and 25,000 shares as a bonus. 100,000 shares to be sold at 05c per share. Signed: Hemphill, Penn and O'Brien.

Plaintiff's Exhibit No. "10."

For identification.

Plaintiff's Exhibit No. "11."

Page 11, Minute Book, Michel Company. Letter from International Development, J. T. Penn, R. G. Belden and others, to the Trustees Michel Company, directing the division of the capital stock of the company other than Treasury, of which O'Brien was to receive 20,000 shares, Hemphill 100,000 and R. G. Belden 100,000.

Plaintiff's Exhibit No. "12."

Page 20, Minute Book, Michel Company. Being meeting of the Board of Trustees of the Michel Company, May 19, 1906.

Present: J. T. Penn, J. H. Hemphill, R. G. Belden, C. L. Butterfield, and William Hart.

Object: To purchase 1280 acres of land adjoining present holdings of the company, for \$2500.00, and 50,000 shares of stock. R. G. Belden recommending purchase in letter.

Plaintiff's Exhibit No. "13." Page 11, same as Exhibit "11."

Plaintiff's Exhibit No. "14." Mining License, E. H. LeFranz.

Plaintiff's Exhibit No." 15."

Page 37, Michel Company's Minute Book. Being report from International Company to Michel Company, January 20, 1908, of receipts and disbursements for the year 1907.

Plaintiff's Exhibit No. "16." EXTRACTS FROM EX. 16.

MINUTES OF THE ANNUAL MEETING OF THE BOARD OF TRUSTEES OF THE IN-TERNATIONAL DEVELOPMENT COM-PANY. Jan. 2nd, 1911.

Immediately succeeding the Annual Stockholders' meeting, the meeting of the Board of Trustees of the International Development Company was held at the principal office of the Company, 624 Peyton Bldg., Jan. 2nd, 1911.

Present: R. G. Belden and A. E. Wayland, being a quorum for the transaction of business as stipulated in the By-Laws of this Company.

Upon motion duly made and seconded, the following officers were unanimously elected:

R. G. Belden, President.

Jas. A. Williams, Vice-President.

A. E. Wayland, Sec'y-Treas.

It was thereupon moved by Mr. Wayland that a dividend of \$70,000.00 be declared from the undivided profits of the Company, such dividends to be paid in promissory notes due the Company, and by 100,000 shares of Crown stock at 50c per share. Motion was seconded and unanimously carried, and the Secretary was ordered to disburse said dividend to stockholders of record in their pro rata amounts.

There being no further business to come before the meeting, it was adjourned.

A. E. WAYLAND, Sec'y-Treas.

Approved:

R. G. Belden, President.

#### EXTRACTS.

MINUTES OF SPECIAL MEETING OF STOCKHOLDERS OF THE INTERNATIONAL DEVELOPMENT COMPANY. Nov. 18th, 1912.

The Secretary, R. Covington, submitted to the meeting a statement showing the financial condition of the company, from which it appeared that the value of the assets of this Company at the present time is the sum of \$490,354.19, and the amount of indebtedness of every nature and kind is the sum of \$139,001.24, leaving a net worth of the company in the sum of \$331,352.95, a copy of said statement being inserted following these minutes.

It was moved and seconded that this Company declare a dividend of \$10.00 per share on the capital stock of the company, payable forthwith, and that said dividend be paid by turning over and conveying to the stockholders, property of the company of the net value over incumbrances as follows, to-wit:

Crown Coal & Coke Co. Stock	\$10,125.00
British Columbia Inv. Co. Stock	81,161.00
Mills Syndicate Coal Mines Stock	18,776.50
Real Estate	92,000.00
Preston Farms Interest	52,937.50
Riparia Orchard Tract	45,000.00
-	
	\$300,000.00

The motion being put to vote, was unanimously carried.

WHEREAS, on the 18th day of November, 1912, a dividend was declared by International Development Company of Ten Dollars (\$10.00) a share on its capital stock, payable forthwith, the said dividend to be paid by turning over and conveying to the stockholders, property of the company as described in the minutes of said meeting, and as described in the division herein made.

NOW, THEREFORE, the undersigned, being all the stockholders of said company, and holding stock as follows, to-wit:

R.	G.	Belden1	4,800	shares
A.	E.	Wayland1	4,800	shares
R	Cor	vington	400	shares

hereby agree that the said property included in said dividend shall be divided between them as follows:

Paintiff's Exhibit No. "17."

Journal International Development Company.

Plaintiff's Exhibit No. "18."

Cash Book, International Development Company.

Plaintiff's Exhibit No. "19."

Cash Book, International Development Company.

Plaintiff's Exhibit No. "20."

Stock Ledger, Michel Coal Mines, Ltd.

Plaintiff's Exhibit No. "21."

Certificate Book, Michel Coal Mines Ltd.

Plaintiff's Exhibit No. "22."

Certificate Book, Michel Coal Mines Ltd.

Plaintiff's Exhibit No. "23."

Articles of Agreement between International Development Company and S. W. O'Brien, by which O'Brien agreed to do \$500.00 worth of printing for 20,000 shares of Michel Company stock. Agreement annuled March 6, 1906.

Plaintiff's Exhibit No. "24."

Plaintiff's Exhibit No. "25"

Not introduced.

Plaintiff's Exhibits for identification "26" to "30" inclusive, not introduced.

Paintiff's Exhibit No. "31."

Prospectus Michel Coal Mines Ltd., containing report, map, letters, and other information relative to the property of described as 1280 acres valuable coal lands in Crow's Nest District, B. C., issued by Inland Surety Company, Fiscal Agents.

The prospectus is devoted to telling who the company officers are including Hemphill, Hart, Penn, Harvey, Butterfiield, & R. G. Belden. Map of district; report of Hemphill to officers and Trustees upon the property; geological formation; its proximity to other coal properties, and that one exposure of coal was found; and containing recommendations. Statement of Baptice Lameroux, that the ground "is just as good as the Crow's Nest Pass Company and the McInnis ground, and better; for in this ground the dip of the veins is such as to make it cheaper to mine," and letters from R. G. Belden through the Michel Coal Mines Company that he had made an examination of the company's property and that the formation was similar to other adjoining properties where coal had been discovered.

Plaintiff's Exhibit No. "32."

Nex Perce, Idaho, Mar 3 1910

A. E. Wayland, Spokane, Wash.

Dear Sir:-

Should like to help the work along by subscribing in a small way for \$25.00 of stock if that will help any let me know.

Yours very truly,

R. W. Lloyd.

March 11, 1910.

Mr. R. W. Lloyd, Nex Perce, Ida.

Dear Sir:

Replying to your favor of the 3d, I wish to say that according to the old adage, 'every little bit helps,' and we would be pleased to receive your subscription for \$25, as per the terms of the voluntary subscription now being made by the stock holders for the Michel tunnel.

I wish to say that outside of the subscriptions made at the annual meeting, several voluntary subscriptions have come in and others have expressed themselves as being willing to subscribe more in order to push the tunnel in as we have outlined.

I have recently returned from the property where I spent several days with the engineers in getting data for making the final report. They now have all the data at hand and are working on the report which will be completed in the near future. We have been assured that this report will enable us to secure all the money we need for the building of the Railroad, which as you know, is what we have been trying to finance and the construction of which will enable the Michel Company to begin shipping as soon as their tunnel is completed.

Am, personally, very glad to hear from you, as I have not been advised as to where you are in

business at the present time. Will be interested in any special news from that section of the country.

I beg to remain,

Very truly yours,

AEW-B

Secretary.

Nez Perce, Idaho, Mar. 15, 1910

A. E. Wayland, Spokane, Wn.

My dear Wayland-

Just received your letter and hasten to answer it, and enclose the \$25.00 I promised to help further the work on the tunnel. I have faith that the officials at the head of the company are endeavoring to do their best for the benefit of the stockholders.

Yours sincerely,

R. W. Lloyd.

Mch. 18th, 1910

Mr. R. W. Lloyd, Nez Perce, Idaho.

Dear Sir:

Beg to acknowledge receipt of your favor of the 15th inst. with enclosure of draft, \$25.00 for which I hand you herewith, certificate No. 400 for 125 shares in the Michel Coal Mines, Ltd.

We wish to thank you for this subscription and will say that we are using our best efforts to secure railroad transportation this summer. As we probably have advised you, we had practically made arrangements for money for the building of the railroad spur when the recent panic struck the country, and as the people whom we had interested were mostly bankers, it was necessary for them to draw in their cash.

Again thanking you for the interest manifest in the Company, I beg to remain,

Very truly yours,

#### AEW-RC

Letter R. W. Lloyd to A. E. Wayland, March 3rd, 1910, offering to purchase \$25.00 worth of stock. Answer thereto stating that the report on property would soon be completed, and that the Company was assured it would be favorable. Letter of March 15th, 1910, of R. W. Lloyd to A. E. Wayland, enclosing \$25.00, and answer enclosing certificate No. 400 for 125 shares in the Michel Coal Mine Company.

Plaintiff's Exhibit No. "33." Ledger International Development Company.

Plaintiff's Exhibit No. "34."

Cash Book No. "2," International Development Company.

Plaintiff's Exhibit No. "35."

Cash Book International Development Company, commencing August 1, 1912.

Plaintiff's Exhibit No. "36."

Ledger International Development Company.

Plaintiff's Exhibit No. "37."

Journal No. "2" International Development Company.

Plaintiff's Exhibit No. "38."

Journal No. "3" International Development Company.

Plaintiff's Exhibit No. "39."

Record Bills Receivable, International Development Company.

Plaintiff's Exhibit No. "40."

Record Bills Receivable, International Development Company.

Plaintiff's Exhibit No. "41."

Journal, Michel Coal Mines Ltd., beginning February 27, 1908.

Plaintiff's Exhibit No. "42."

Ledger, Michel Coal Mines Ltd., beginning February 27, 1908.

Plaintiff's Exhibit No. "43."

Cash Book. (Company not given.)

Plaintiff's Exhibit No. "44."

Stock certificate book Michel Coal Mines Limited, from certificates 501 to 586 inclusive.

Plaintiff's Exhibit No. "45."

Stock Certificate book, Michel Coal Mines Limited, from No. 251 to 500 inclusive.

Plaintiff's Exhibit No. "46."
Bills Receivable, Michel Coal & Coke Company.

Plaintiff's Exhibit No. "47."

Minute Book, Empire Coal & Coke Company, pages hereafter to be designated.

Plaintiff's Exhibit No. "48."

Journal, Empire Coal & Coke Company.

Plaintiff's Exhibit No. "49."

Ledger, Empire Coal & Coke Company.

Plaintiff's Exhibit No. "50."

Stock Ledger, Empire Coal & Coke Company.

Plaintiff's Exhibit No. "51."

Stock Certificate Book, the Empire Coal & Coke Company, Nos. 251 to 500 inclusive.

Plaintiff's Exhibit No. "52."

Stock Certificate book, Empire Coal & Coke Company, Nos. 1 to 250 inclusive.

Plaintiff's Exhibit No. "53."

Stock Certificate Book, Empire Coal & Coke Company, 501 to 609 inclusive.

Plaintiff's Exhibit No. "54."

Minute Book, Crow's Nest and Northern Railway Company, pages and numbers of exhibits to be hereafter specified. Plaintiff's Exhibit No. "55."

Journal, Crown Coal & Coke Company.

Plaintiff's Exhibit No. "56."

Ledger account, Crown Coal & Coke Company.

Plaintiff's Exhibit No. "57."

Journal No. 2 Crown Coal & Coke Company.

Plaintiff's Exhibit No. "58."

Ledger, No. 2, Crown Coal & Coke Company.

Plaintiff's Exhibit No. "59."

Cash Book No. 2, Crown Coal & Coke Company.

Plaintiff's Exhibit No. "60."

Stock Ledger, Crown Coal & Coke Company.

Plaintiff's Exhibit No. "61."

Stock Ledger, Crown Coal & Coke Company.

Plaintiff's Exhibit No. "62."

Minute Book, Crown Coal & Coke Company.

Plaintiff's Exhibit No. "63."

Stock Certificate Book, Crown Coal & Coke Company, Nos. 1 to 250 inclusive.

Plaintiff's Exhibit No. "64."

Stock Certificate Book, Crown Coal & Coke Company, No. 251 to 500 inclusive.

Plaintiff's Exhibit No. "65."

Stock Certificate Book, Crown Coal & Coke Company, No. 501 to 750 inclusive.

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Plaintiff's Exhibit No. "66."

Stock Certificate Book, Crown Coal & Coke Company, No. 751 to 1000 inclusive.

Plaintiff's Exhibit No. "67."

Stock Certificate Book, Crown Coal & Coke Company, 1001 to 1199 inclusive.

Plaintiff's Exhibit No. "68." Note Register.

Paintiff's Exhibit No. "69."

R. G. Belden, A. E. Wayland, J. H. Hemphill, President. Vice-President. Secy-Treas.

# INTERNATIONAL DEVELOPMENT COMPANY

Spokane, Wash., Jan. 3rd, 1907

Mr. F. L. Farrel,

32 Chamber of Commerce, Milwaukee, Wis.

Dear Mr. Farrel:--

I have carefully read your letter of the 29th ult, and also Mr. Smith's letter of the 28th ult to Mr. Belden relative to the action taken by the Inland Surety Company in sending out letters to the present stockholders of the Michel Coal Mines Ltd. relative to the consolidation with the Crown Coal & Coke Co. As I am bearing the blame for making this move I deem it necessary that I say something in connection with Mr. Belden and Mr.

Hemphill which will give you a clear conception of the circumstances.

From my point of view I will say in the beginning that both your and Mr. Smith's letters are more ludicrous than serious. As you undoubtedly know, or have reason to believe, the International Development Company is vitally interested in the success of the Crown Coal & Coke Co., and you are also aware, we were not making as rapid a start in the sale of the treasury stock as I thought would be necessary for completing the sale of the 100,000 shares by the time we ought to begin work.

Many of the Michel Coal Mines, Ltd., Stockholders are quite enthusiastic over the outcome of that district and had expressed their willingness to invest some capital in the property should they make a big showing. Having failed to make such showing as has been made on the Crown Coal & Coke Co.'s property I took the view that we could interest them in the Crown Coal & Coke Co. The first letter sent out, a copy of which was sent to you, I will admit was rather strong but I made it so purposely in order that it would interest them sufficiently whereby we could pursuade them to buy some of the treasury stock of the Crown Coal & Coke Co. As to our consulting you in regard to the consolidation you understand that this suggestion was made to them by the Inland Surety Company which has nothing whatever to do with the Crown Coal & Coke Co. but as a company is

a copartnership which was organized expressly for the purpose of acting as fiscal agents for the sale of the stock of the Michel Coal Mines Ltd. From the tone of the letter sent you, you will undoubtedly see that we (the Inland Surety Co.) placed ourselves in the minority and would insist on the Michel stockholders to buy treasury stock in the Crown Coal & Coke Co. in order that they might cooperate with us, provided that such a condition could be brought about. I wish to refer you to the following passage in copy of letter sent you. "The fact which we (The Inland Surety Co.) want to present for your consideration at the present time is the possibility of securing a consolidation of the Michel Coal Mines Ltd. with the Crown Coal & Coke Co. which has recently been formed by Eastern capitalists, for the development of a large tract of coal land adjoining and lying immediately North of the property of the Michel Coal Mines Ltd." From this passage you will see that I (writing as the Inland Surety Co.) present it in the light of a tentative proposition without any definite promises whatever. In my subsequent letter to these same people I dealt exclusively with the merits of the Crown Coal & Coke Co.'s properties. In answering inquiries and in personal conversation we did not put the argument so strong as in the first letter but stated the exact facts. As Mr. Hemphill has stated to you this method has brought results already and there is further indication that it will

mean the sale of several thousand shares of Crown Coal & Coke Co. stock and the purchasers are buying it with a clear understanding of the situation.

When the subject is once introduced which was the purpose of my first letter a copy of which was sent you it is then easy to get them to look into the merits of the Crown Coal & Coke Co. After this is done only a few words will suffice to overcome any false impression that might be inspired by the first letter.

As a matter of fact, I believe it a very good move to get as many of the Michel people interested in the Crown Coal & Coke Co. as possible as it will mean a more friendly feeling between the companies. So far as this move is concerned I have no apology to offer and would feel very much inclined to resent any insinuation that we are misrepresenting any facts whatever. However, I can understand that you and Mr. Smith might be mislead in deducting conclusions when you failed to consider the fact that this proposition was made by the fiscal agent of the Michel Coal Mines Ltd. to the stockholders of that company, and is in no way compromising the Crown Coal & Coke Co.

Now, Mr. Farrel, personally I assure you that no one has the interest of the Crown Coal & Coke Co. at heart more than myself, and in connection with Mr. Belden and Hemphill I have cooperated

in every way possible to bring it to its present condition for presentation as an investment.

Trusting this explanation will bring the matter before you in a different light, I beg to remain,

Very truly yours,

**AEW-MR** 

A. E. Wayland.

P. S. The object of the above letter is clearness and not neatness as you will see by the scratches which I have inserted purposely as the explanatory antecedents of some of the pronouns used. In short the letters sent to the Michel people were signed Inland Surety Co. Per A.E.W. After the party became interested his inquiries were turned over to the International Development Co., which dwelt upon the merits of the Crown Coal & Coke Co.'s property as its fiscal agent. While the Inland Surety Co. and the International Development Co. are practically composed of the same individuals vet in the eyes of the stockholders of the Michel Coal Mines, Ltd. they are two definite and distinct concerns. I again ask you to consider the proposition in this light and you will see that the position of the Crown Coal & Coke Co. was in no way whatever compromised.

AEW.

# Plaintiff's Exhibit No. "70."

#### INLAND SURETY COMPANY

Spokane, Wash., Dec. 8, '06.

Mr. F. W. Boyd, Freize, Idaho.

Dear Sir:-

As a stockholder of the Michel Coal Mines, Ltd., we believe that you are interested with us in the success of the company. At this writing we will not go into detail in regard to the progress that has been made this summer, as it is the intention of the company to issue a detailed report in the near future, a copy of which will be sent to you. We wish to say, however, that nearly all of the directors and a number of the heaviest stockholders visited the property this summer and fall and expressed themselves as very much pleased with the outlook, and also congratulated the management on the progress of the work, the economy and low cost of work done.

The fact that we want to present for your consideration at the present time is the possibility of securing a consolidation of the Michel Coal Mines, Ltd., with the Crown Coal & Coke Company, which has recently been formed by eastern capitalists for the development of a large tract of coal land joining and lying immediately north of the property of the Michel Coal Mines, Ltd. It is well known fact that better results can be obtained through a

combination of this kind, as competition is more or less eliminated, and it is quite sure to follow a considerable reduction in the cost of operation. The consolidation of these two companies would give the combined companies control of practically all of the good coal land situated on the summit of the Rock Mountains and in our vicinity.

The members of this office, all of whom are heavily interested in the Michel Coal Mines, Ltd., have recently invested heavily in the stock of the Crown Coal & Coke Company, and have been recognized in the management of that company to the extent of being named as three of the Board of Directors. We intend to continue investing in this stock as heavily as possible, and if we can get sufficient backing from our clients and the present stockholders of the Michel Coal Mines, Ltd., we are confident of securing sufficient control in the Crown Coal & Coke Company to bring about the consolidation.

There has been considerable work done on the property of the Crown Coal & Coke Company, which taken together with the exposures of the veins through erosion, makes it very easy to ascertain the dimensions of the several veins, whose thickness are outlined in the enclosed prospectus. We hope that you will see your way clear to join us in acquiring as large a block of their stock as possible in order that we may have your co-operation in carrying out our plans as outlined herein.

The Crown Coal & Coke Company has just authorized the sale of 100,000 shares of their treasury stock at 25c per share, and we believe this does not represent the actual value of the property. Subscriptions for this stock can be made at the office of the International Development Company, which is acting as fiscal agents.

Very truly yours,

Inland Surety Company, Per A E. W.

A.E.W.-R.C.

Plaintiff's Exhibit No. "71."

Letter, December 17, 1906, Inland Surety Company, per AEW, to J. S. Hogue, which encloses a map and description of the Crown property, cost of mining, etc., net profit per ton, and urging investment in some of the stock.

Defendants' Exhibit No. "72" and "73." Identified by witness but not introduced.

Defendants' Exhibit No. "74."

Letter, Hogue to R. G. Belden, introduced as part of witnesses' cross examination, and acknowledging receipt of coal.

Plaintiff's Exhibit No. "75."

Letter to Mr. Grove marked for identification but not introduced.

Plaintiff's Exhibit No. "76." Letter, Inland Surety Company, per AEW, February 19, 1906, to F. W. Boyd, Palouse, Washington, relative to purchase of Michel stock, stating that all subscriptions at 05c per share will close Saturday, the 24th, and contains the following: "By buying Michel stock now, and burning Michel coal next winter, you will not only solve your fuel question, but will make a fortune even if this stock

Defendants' Exhibit No. "77."

Nest."

advances only one-tenth as much as the Crow's

Letter, from the Michel Company, per MCM, February 12, 1906, to Charles Hill, Hartline, Washington, relative arrangement with Mr. Belden to dispose of a portion of his (Hill's) stock to realize a portion of the \$500.00 invested.

Defendants' Exhibit No. "78."

Was a letter dated 12-20-06, Charles Hill to Inland Surety Company inquiring the reason for his not receiving circulars the same as other shareholders received.

Defendants' Exhibit No. "79." For identification, not introduced.

Plaintiff's Exhibit No. "80."

Letter, A. Eugene Wayland, April 6, 1906, to C. L. Butterfield, Moscow, relative Michel property. Letter deals with Wayland's visit to the property, and describes the formation, and contains the following marked by the District Attorney: "We

dug down in the snow a few places, where we thot the conditions looked favorable for the exposure of coal, and found coal in almost every place."

# Defendants' Exhibit No. "81."

Admitted as part of cross examination of Baptice Lameraux, which contains the following:

"In looking over timber this winter I found the vein of coal that I was looking for last fall on your claim, and I can show it to you at any time, E. T. C."

#### Defendants' Exhibit No. "82."

Letter, Lameraux to International Development Company, Feb. 12, 1906, as part of his cross examination, and refers to finding a vein of coal on the Michel property.

Defendants' Exhibit No. "83." Not introduced.

# Plaintiff's Exhibit No. "84."

Circular letter, Michel Coal Mines Limited, per R. G. Belden, to the Stockholders, relative financing Crow's Nest and Northern Railway Company, stating arrangements had been made and that all the money necessary would be available to build the road, and requesting stockholders in Michel to purchase stock in the Crown, and detailing advantages to them, and asking for monthly subscriptions for 1 to \$10.00 for stock.

384 Russell G. Belden and A. Eugene Wayland vs.

Plaintiff's Exhibit No. "85." Not introduced.

Defendants' Exhibit No. "86."
Attached to Plaintiff's Exhibit No. "32."

Defendants' Exhibit Nos. "87" & "88." Not introduced.

Plaintiff's Exhibit No. "89."

Articles of Incorporation, Crown Coal & Coke Company.

Incorporators: R. G. Belden, A. E. Wayland, and E. M. McKerr-Kastan.

Object: Lease, buy, sell, develop, promote, bond, etc., coal and other claims.

Capital stock: \$2,000,000.00, \$1.00 per share.

Trustees: F. L. Farrel, H. A. Smith, A. Ballantine, F. W. Tolles, J. T. Nevin, C. M. Gerwig, H. M. McKerr-Kastan, R. G. Belden.

Executed: August 25, 1906.

Plaintiff's Exhibits Nos. "90" to "99" Inclusive Are the British Columbia Mining Licenses of J. H. Hemphill, Emily Corner, Martha Corner, F. W. Hemphill, A. C. Hemphill, T. J. Demorest, W. J. Demorest, B. E. Belden, A. E. Wayland and R. G. Belden, respectively.

# Plaintiff's Exhibit No. "100."

Certificate No. "9," Crown Coal & Coke Company, 50,000 shares issued to L. Whitney, January 2nd, 1909, marked across face, "Cancelled 1-2-07."

Certificate No. "11," Crown Coal & Coke Company, 100,000 shares issued to William A. Hemphill, January 2nd, 1907, marked on face "Cancelled 1-2-09."

# Plaintiff's Exhibit No. "102."

Printed copy of Act Legislative Assembly, Province of British Columbia, incorporating Crow's Nest and Northern Railway Company, with Russel G. Belden, J. H. Hemphill, C. L. Butterfield, and A. E. Wayland, as the body corporate.

#### Plaintiff's Exhibit No. "103."

Page 13, Minute Book, Crown Coal & Coke Company. Letter or proposition R. G. Belden to Crown Coal & Coke Company offering to sell to Company ten coal locations in Kootenai district, B. C., for \$2,000,000.00 or in lieu thereof, 1,999,991 shares of capital stock of Crown Coal & Coke Company out of which he agrees to place in Treasury for development 750,000 shares and to deliver 100,000 shares to the original locators, and 150,000 shares to the Secretary, subject to the order of 14 different persons ranging in amounts from 3 to 22,000 shares, including A. E. Wayland, who received 22,500, and R. G. Belden, 15,000, and agreed to deliver stock to 10 different persons in amounts from 25 to 125,000 shares.

#### Plaintiff's Exhibit No. "104."

Pages 20 & 30, Minute Book Crow's Nest & Northern Railway, being the minutes of the Directors' meeting held at Spokane, July 2nd, 1908.

Present: J. H. Hemphill, C. L. Butterfield, R. G. Belden, and A. E. Wayland.

The application of the following persons to purchase stock at par were accepted: Crown Coal & Coke, 1000 shares; C. L. Butterfield, R. G. Belden, A. E. Wayland, and J. H. Hemphill, 1 share each.

Meeting of the stockholders was voted to be held August 11, 1908.

# Plaintiff's Exhibit No. "105."

Page 31, Minute Book, Crow's Nest & Northern Railway Company, being an application of the Crown Coal & Coke Company to purchase 1000 shares of railway stock at \$100.00 per share.

#### Plaintiff's Exhibit No. "106."

Being pages 39-40 & 41 of plaintiff's exhibit 54, being a meeting of the board of directors of the railway company held at Crow's Nest, British Columbia, August 11, 1908.

Present: C. L. Butterfield, J. H. Hemphill, R. G. Belden, and A. E. Wayland, which among other things was accepted by the directors a proposition of the International Development Company the complete charter covering the authorized construc-

tion of the Crow's Nest and Northern Railway Company as set forth in the special act of the British Columbia parliament of Feb. 1908, for 4,995 shares of railway stock, with the exception of 500 shares which was to be retained by the International Development Company. 2,000 shares of the Crown and 660 shares to the Michel, and agreed to hold the balance, together with the stocks and all amounts derived from such sale to the above named coal company to be used exclusively for promoting the interests of the railway company, together with that of coal companies as may from time to time be deemed best. \$90,000 was voted Crown Coal & Coke Company for right-of-way and the Crown Coal & Coke was given credit, and received 1,000 shares of railway stock fully paid up.

The following officers were elected for the ensuing year: James A. Williams, President; C. L. Butterfield, and J. H. Hemphill, Vice-Presidents; A. Eugene Wayland, Secretary-Treasurer.

#### Plaintiff's Exhibit No. "107."

Prospectus Crown Coal & Coke Company, giving general information regarding the company, names of the officers, location of claims, transportation, comparison of the Crown with other coals, and report of Robert R. Gamble to the effect there are 486,400,000 tons of coal on the company's property.

Plaintiff's Exhibit No. "108."

Letter dated September 6, '06, R. G. Belden to

F. L. Farrel, marked "Dict. I.D.C.-R.C." as follows: "I have wired you as follows which I now confirm: 'All papers mailed. If practical hold meeting Tuesday. Absent directors will waive notice. Writing fully. Tolles must attend.'

You will notice among the enclosed papers a form which the different directors who are not present at the meeting can sign, waiving notice of the directors meeting, which will make your meeting legal on short notice. I will secure the balance of the signatures later on. What I meant by saying that Tolles must be present is this: Tolles has already been named as a director in the articles of incorporation and they have been filed, therefore, to make a quorum, he should be present and after completing the organization he may hand in his resignation, and you may elect Martin Anderson or any other individual you desire to fill his place, this being according to the by-laws.

You will also notice among the papers I have drafted up the minutes for the form for you to go by so as to make everything regular under the laws of this state. The letter which is marked No. 1 is a tender of the property on my part to the company and according to the minutes you will accept my offer which will make the stock fully paid under the laws of this State."

The balance of the letter is a direction how to issue certain stock.

#### Plaintiff's Exhibit No. "109."

Letter, July 10, 1906, R. G. Belden to F. L. Farrel, regarding the analysis, and giving the analysis of different coal mines in that vicinity, and contains the following clause, marked by the district attorney: "I do not anticipate that Mr. Wheeler's withdrawal will in any way affect any of the other parties and feel, as I said before in my letter to Mr. Smith, that as long as Mr. Wheeler does not agree with the idea of the rest of the people in regard to developing the property it is best not to try and induce him to come in. I do not fear in the least of our plans being thrown out of gear by his withdrawal, as Pittsburgh stands ready to absorb any of the shares left which will give the control to the eastern people. We will see that you are protected in this, even if one share would have to be placed later on. This you may consider binding on our part to see that you get control."

#### Plaintiff's Exhibit No. "110."

Letter, December 12, 1907, R. G. Belden, to F. L. Farrel, relative to giving Farrel a chance to subscribe for stock, and contains the following: "So if you wish to take 10,000 shares you can forward me the money and I will send you at once a receipt for so much stock from the International Development Company and then when you come out in January we will place the papers in the bank so that you will have it direct from the bank.

Understand in giving you the chance to join us on this stock subscription, we are assuming that you will bend your efforts to make Spokane your future home, so as to throw the weight of your holdings with the control here. This would give us a handsome control and I think would be better for all of us."

Plaintiff's Exhibit No. "111."

R. G. Belden, A. E. Wayland, J. H. Hemphill,
President. Vice-President. Secy.-Treas.
INTERNATIONAL DEVELOPMENT
COMPANY

Spokane, Wash., Dec. 24th, 1908.

Mr. F. L. Farrel,

32 Chamber of Commerce Bldg.,

Milwaukee, Wis.

Dear Sir:

Yours of the 15th and 18th at hand and it is very evident that the mails have been interfered with by the heavy rains throughout this district.

In regard to the rumor relative to the consolidation of the Crown Coal & Coke Co. with that of the Michel Coal Mining Co., Limited, will say that this is one of Wayland's schemes to make sales of stock in the Crown Coal & Coke Co. to the stockholders of the Michel Co. who as you know are our clients. This was done after talking the matter over with Mr. Butterfield, myself and one or two other directors in the Michel Co., and we

agreed that his plan was good. As far as the consolidation is concerned this will receive no serious thought, but you of course understand this would have to rest entirely with the Crown Coal & Coke Co., but there are a great many advantages to be derived by the Michel Coal Mining Co., Limited, through the Crown Coal & Coke Co. such as the removing of all competition, building of railroads and producing mine, etc., which would make the Michel Coal Mines Co., Limited, much more valuable, and it is our desire that the stock-holders of the Michel Coal Mines Co., Limited, shall assist and encourage the Crown Coal & Coke Co. by subscribing for the stock.

This appears to meet with their approval and I made a sale Saturday of 500 shares to one of these people, and have received other correspondence and promises from others.

You understand our clients are among the farmers and we always conduct their affairs as we think best for their interests, knowing that we are in a better position to judge than they themselves, and for this reason we some times take such courses as Wayland's in order to make them look favorably on our proposition.

Yours very truly,

**RGB-MR** 

R. G. Belden.

R. G. Belden, A. E. Wayland, J. H. Hemphill, President. Vice-President. Secy.-Treas.

# INTERNATIONAL DEVELOPMENT COMPANY

Spokane, Wash., Jan. 3rd, 1907.

Mr. F. L. Farrel,

32 Chamber of Commerce Bldg., Milwaukee, Wis.

Dear Sir:

Yours of the 29th ult, at hand and contents noted. Will say that I am not going to say much about the controversy inasmuch as you known I am somewhat hotheaded and naturally resent any statements in regard to my not having been careful in the proper representation of facts therefore I have left your letter, also Mr. Smith's for Wayland and Hemphill to answer. I simply make this suggestion, that you evidently did not read my letter carefully nor did you take into consideration that no sales are closed up without further communication and usually with a personal interview, and at such time everything will be stated frankly to any intended purchaser. I believe there are few firms who receive as many letters from their clients as we do expressing their confidence and satisfaction in the way we have handled their business.

Respectfully yours,

RGB-MR R. G. Belden.

Plaintiff's Exhibit No. "112."

Letter, January 3rd, '07, R. G. Belden to F. L. Farrel, which refers chiefly to a controversy oven consolidation, and the fact that some company was not registered in British Columbia, and contains the following: "At the meeting the only thing that will be necessary will be the reelection of the trustees and I anticipate that there should be no change therefore we will vote and elect the directors as they now stand. Hemphill has suggested now that Mr. Barnes is coming in that there ought to be a director at Minneapolis and he suggested Kerr who stands very high. He argues that not only from the fact of the two syndicate members but because Kerr is a very strong man and because Barnes seems to be taking an active interest in the sale of stock and we would like to lend him every encouragement that we can. If this is done we want the suggestion to come from you people at Milwaukee as to whose place he shall take. If you have a weak member in Milwaukee then it would be an excellent plan to have Mr. Kerr elected."

Defendants' Exhibits Nos. "113" to "117" Inclusive.

Letters identified, but not introduced.

Plaintiff's Exhibits Nos. "118," "119" & "120."

Prints or pictures of the different coal fields, or claims owned by the companies.

Plaintiff's Exhibit No. "121."

Letter July 14, 1906, signed R. G. Belden, marked "Dict. I.D.C.-R.C." to A. Ballantine, Milwaukee, relative to a proposition to give him the one-half share in the coal proposition about to be taken up with Milwaukee, Pittsburgh and Minneapolis people, telling him it was a good thing, and he was fortunate in having an opportunity to come in, and agreeing to give him any desired information, and contains the following: "The only point at issue is the work which must be done in co-operating in the flotation of our company and we feel very confident that with the assistance of you eastern people that this will be a very easy matter. The public today are very anxious to invest in coal and with the showing that we can make to the investing public, we should have no difficulty whatever in raising sufficient money to develop the property and bring it to a productive stage in a very short time. In investing in this proposition there is one thing that you can count on absolutely, and that is that you are in on the ground floor basis and I believe that you would be surprised at our being able to secure this property for so small a figure were you in a position to visit it. I think that both Messrs. Farrel and Smith will agree with me that the-etc."

Plaintiff's Exhibit No. "122."

Letter August 24, 1906, A. Ballantine from International Development Company, per R. G. Belden,

marked "Dict. I.D.C.-R.C." and contains the following: "We are pleased to inform you that after considerable difficulty, we have, at least, the affairs of the coal company all in satisfactory shape and must make our payments on the purchase price at once. The papers transferring the title are held by the Bank of Montreal of this city, with instructions as specified in the letter, a copy of which we herewith enclose. We do this so that you may fully understand under just what conditions the bank holds the papers, and we hope that you will rush in your subscription at the earliest possible date. The letter of instruction calls for only ten days from date, but in case of necessity this can be extended should any member be out of town or for any other reason be unable to make his remittance at once."

# Plaintiff's Exhibit No. "123."

Annual meeting stockholders of the Crown Coal & Coke Company, January 21, 1908, on page 17, Minute Book of the Company, which recites that the general manager gave a review of the past year's work; sales of Treasury stock reported to date was approved and it was decided that directors be authorized to sell all stock necessary for development and for railroad, and subscribe toward the railroad such amount as they deem advisable; section 4, article 2, of by-laws was amended giving managing director general management of all affairs pertaining to the operation of the property for the board of trustees, and shall be responsible and report only to them;

an election was held and C. L. Butterfield, R. S. Butterfield, F. L. Farrel, I. A. Barnes, R. G. Belden, J. H. Hemphill, J. T. Nevin, F. H. Mason, and A. E. Wayland were elected directors for ensuing year.

# Plaintiff's Exhibit No. "124."

Page 19, Minute Book, Crown Coal & Coke Company. Annual meeting of directors January 21, 1908.

Present: C. L. Butterfield, F. L. Farrel, R. Butterfield, J. H. Hemphill, R. G. Belden, A. E. Wayland, and F. H. Mason; and the following officers were elected for the ensuing year: C. L. Butterfield, President; F. L. Farrel, 1st Vice President; R. G. Belden, 2nd Vice President, and General Manager; A. E. Wayland, Secretary-Treasurer; R. Covington, Asst. Secretary.

# Plaintiff's Exhibit No. "125."

Pages 20 & 21, Minute Book, Crown Coal & Coke Company, being special meeting of the directors, January 21, 1908.

Present: C. L. Butterfield, R. S. Butterfield, J. H. Hemphill, R. G. Belden, and A. E. Wayland.

General Manager reported he had subscribed for 1,000 shares of the Crow's Nest & Northern Railway at par value at \$100.00 per share. On motion the action was approved.

Thereupon discussion was opened for a sufficient additional subscription of stock of the Crow's Nest & Northern Railway Company to enable the Crown Coal & Coke Company to control all stock that was

to be called up in said railway company. After assurance from the Provisional Directors of the Crow's Nest & Northern Railway Company that an additional 2,000 shares would control all called up stock of the said railway company, it was moved by Mr. R. S. Butterfield and seconded by Mr. Wayland that the 2,000 shares of railroad stock be purchased by paying therefor 150,000 shares of the Treasury stock of the Crown Coal & Coke Company, and that the Secretary be and is hereby authorized to issue said 150,000 shares from the Treasury to be delivered upon receipt of 2,000 shares of fully paid Crow's Nest & Northern Railway stock.

On motion the foregoing was adopted.

Plaintiff's Exhibit No. "126." Same as No. "106."

Plaintiff's Exhibit No. "127."

Page 49, Minute Book, Crow's Nest Railway, being special meeting of the directors held November 29, 1910, for considering the sale of 120,400 shares of the stock in Crown Coal & Coke belonging to the Crow's Nest & Northern Railway, and on motion it was voted to sell same at 50c per share, and to take notes in payment, and it is further determined that the International Development Company vote the Crown stock held by the Crow's Nest at any stockholders meeting of the Crown, and a resolution was adopted authorizing the board of trustees to purchase 200,000 shares of the Treasury stock of the Crown, 100,000 shares at 50c per share,

and 100,000 shares at 75c per share. \$50,000 to be paid by notes, secured from sales stock, and the balance the stock was delivered.

# Plaintiff's Exhibit No. "128."

Pages 54 & 55, Minute Book of Crown Coal & Coke Company, being record of the annual meeting board of trustees, January 27, 1911.

Present: C. L. Butterfield, A. Hobson, and A. E. Wayland.

After election of officers proposition of securing funds and the proposition of the railway company in plaintiff's exhibit "127" was accepted.

# Plaintiff's Exhibit No. "129."

Page 25, Minute Book, Empire Coal & Coke Company. Record, annual meeting of stockholders January 19, 1911. Nothing marked or read into the record.

# Plaintiff's Exhibit No. "130."

Page 56, Minute Book, Michel Coal Mines Limited. Annual meeting of stockholders. January 15, 1912. Nothing marked or read into the record.

#### Plaintiff's Exhibit No. "131."

Page 25, Minute Book, Empire Coal & Coke Company. Same as exhibit "29."

# Plaintiff's Exhibit No. "132."

Page 38, Minute Book, Crown Coal & Coke Company, adjourned stockholders' meeting of Company

January 19, 1910. No part of minutes marked or read into record.

# Plaintiff's Exhibit No. "133."

Page 50, Minute Book, Crown Coal & Coke Company, being minutes of annual stockholders' meeting January 17, 1911, and the following trustees were elected: C. L. Butterfield, A. Hobson, A. Woods, J. Greerlong, A. E. Wayland. No parts of the minutes marked or read into record.

# Plaintiff's Exhibit No. "134."

Page 66, of same Minute Book. Special meeting of stockholders August 21, 1911, relative bonding property of company for \$1,000,000.00. No part of the minutes marked or read into record.

# Plaintiff's Exhibit No. "135."

Page 73, same Minute Book. Special meeting stockholders, October 10, 1911.

Object: Increasing capital stock from 2 to \$3,000,000.00.

# Plaintiff's Exhibit No. "136."

Pages 116, 17, 18 & 119, Minute Book of said Company, being special meeting of stockholders, October 7, 1912.

Object: Selling bonds of company.

# Plaintiff's Exhibit No. "137."

Page 126, Minute Book of said company (Crown), being special meeting of stockholders November 1, 1912. No part marked or read into record.

#### Plaintiff's Exhibit No. "138."

Page 25, Minute Book International Development Company, record trustees' meeting January 10, 1910.

Present: R. G. Belden, and A. E. Wayland. At which meeting A. E. Wayland was appointed to vote all the stock held by the company, both directly and as trustee at the annual meeting of the Crown Coal & Coke Company to be held January 18, 1910, and R. G. Belden was authorized to vote at said meeting stock standing in the name of the company in the Michel, Mill Syndicate, and Empire.

#### Plaintiff's Exhibit No. "139."

Page 26, Minute Book, International Development Company, record of minutes special meeting trustees, July 30, 1910.

Present: R. G. Belden, and A. E. Wayland.

Object: Authorizing A. E. Wayland, or R. G. Belden, to vote all the stock owned by the International Development in the Crown, Michel, Empire, and Mills Syndicate, at all meetings of said company.

#### Plaintiff's Exhibit No. "140."

Page 27, Minute Book, Part of minutes of exhibit 139.

Object: Authorizing R. G. Belden, or A. E. Wayland to vote stock of the Crow's Nest & Northern Railway Company held by the International Development Company.

# Plaintiff's Exhibit No. "141."

Page 3, Minute Book, Empire Coal & Coke Company, being articles 3 & 7 of the articles of incorporation of said company. Article 3 capital stock \$1,500,000.00, \$1.00 per share, par value. Article 7, providing for 7 trustees with A. S. Charlton, R. E. Muir, W. J. Graham, John Marsh, E. J. Boteet, Luke Faires, and R. G. Belden, as trustees.

#### Plaintiff's Exhibit No. "142."

Page 7, Minute Book of Empire Company, containing proposition of R. G. Belden, to sell 1240 acres of coal land for \$1,500,000.00, or in lieu 1,500,000 shares of capital stock, agreeing to place in the treasury 500,000 shares and the company to deliver 1,000,000 shares to the 50 persons named in the proposition, ranging from a few to 100,000 shares or more each.

#### Plaintiff's Exhibit No. "143."

Page 12, Minute Book of Empire Company, record organization meeting second board of trustees of said company. Motion carried making International Development Company fiscal agent and authorizing it to sell Empire Treasury Stock at 25c per share.

Plaintiff's Exhibit No. "144."

British Columbia Mining License A. J. Giles.

Plaintiff's Exhibit No. "145."

British Columbia Mining License A. Cope.

# Plaintiff's Exhibit No. "146."

Prospectus Empire Coal & Coke Company, giving general description of the corporation, service indications of the property, the statement that "In the opinion of the most competent engineers and geologists, the extension of these coal veins (Crown) underlie the entire property of the Empire without any material variation in thickness.

### Plaintiff's Exhibit No. "147."

Letter April 2nd, 1909, International Development Company, per R. G. Belden to C. A. Bryan, describing in a general way the property of the Empire Coal & Coke Company, its proximity to the Crown Company, and the presence of coal on the Crown, and offering inducements to Mr. Bryan to purchase stating there is no doubt that the veins of the Crown extend under the Empire, and stating further as follows: "The coal companies of this valley are all interested in the railroad, and it is built solely to hande their output. The charter has already been granted; survey completed, approved and accepted by the government; the right-of-way purchased; considerable right-of-way cleared; and several thousand ties already stacked on the right-of-way, etc."

# Plaintiff's Exhibit No. "148."

Letter July 23, 1910, R. G. Belden, per "C" to C. A. Bryan relative sales of stock in the vicinity of Freewater, Oregon. The letter contained among other statements the following: "If I were you I

would not let anything interfere with my work. I would not put off even an hour seeing people that you feel that you might interest. Go after them good and hard. Use Crown as a bait where you think it will assist in getting business."

# Plaintiff's Exhibit No. "149."

Letter, May 19, 1910, A. E. Wayland to C. A. Bryan, relative to sale of stock. Among other the following: "The immediate future could not look better than the present opportunity for business could not be better, the indications are that the farmers in the west are going to get the very best of prices for their products this fall on account of the failure of crops in he east. The farmer can always be induced to do business on future prospects rather than on his present condition."

#### Plaintiff's Exhibit No. "150."

Letter, R. G. Belden to C. A. Bryan, November 8, 1910. "Am very anxious that our sales count up now as Hobson and I have laid out plans in regard to our work at the property, and it is up to you fellows to supply us with the cash to go ahead with the work. If you will do the business so that Hobson and I can get things lined up, we will show you how to make things appear up there so that people will be enthused at once with the property.

As soon as we get the ties and right-of-way cleared on the upper five or six miles, we are going to lay the ties out ready for the rails so as to make it appear as practically built. You can understand how this would appear to investors, and it certainly should make a great hit.

Defendants' Exhibits Nos. "151" to "156" inclusive were letters written by and to witness Faires as part of his cross examination.

### Plaintiff's Exhibit No. "157."

Letter of December 7, 1908, to which Mr. Belden's name is signed and addressed to Luke Faires, as follows: "I have just been up to the Bank of Montreal and read over the two letters, one to your side kicker and one to the Cashier of the Bank. Now, owing to the wording of the letter being so strong, I did not think it advisable to ask Buchanan, the Mgr., to change the reading. He, however, referred only to the Crown Coal & Coke Company. The letter to vour side kicker is short but the letter to the Cashier of the Bank occupies the full page and is much stronger than the letter to your side kicker. He refers in both letters to the Crown Coal & Coke Company, therefore, I am writing you another letter which is enclosed herewith and dated back so that it will not appear as an explained letter of the Bank of Montreal's letter. You can show this so as to make it appear that the principal holders of the Crown Company have been advised by their Chief Engineer to pick up or grab at once the Empire property, as it is as favorable as the

Crown, although the development has not been done on it that has been done on the Crown. This letter coming from the Bank of Montreal, which has a capital of \$11,000,000, should be of vast assistance to you and you should utilize it to the fullest extent. Get a copy of the original letter, that is the one to the Cashier of your Bank, so that you can show it, leaving the original for him to show. I think from this that you will grasp the meaning which I intend that you shall use with the accompanying letter dated Dec. 3rd. Of course you can let this appear as though it has been received by you prior to this date and that you did not care to let the information be known generally."

Dec. 3rd, 1908.

Mr. Luke Faires, Payette, Ida.

Dear Faires:

Now, Faires, it was not my intention in this matter of floating the Empire Coal & Coke Company to put you in touch with the real facts of the conditions, but I think that by your guarding it properly, I can especially trust you with this information, which means a great deal to us, who have already gone into this proposition.

As you know, the Empire Coal & Coke Company's property adjoins the Crown Coal & Coke Company on that portion of the Crown Coal & Coke Company's ground which has been thoroughly

proven and the Chief Engineer of the Crown Coal & Coke Company has examined this ground thoroughly and reported that we could not afford not to take up this ground at once. As you know, the chief stockholders of the Crown Coal & Coke Company have also subscribed very heavily in the Empire Company's subscriptions. This means, as an inside tip, that we are following the instructions of the Engineer of the Crown Coal & Coke Company that we should at any cost secure this property of the Empire Coal & Coke Company, as it is fully as valuable as the Crown Coal & Coke Company's property although not so thoroughly developed. He reports that there is absolutely no question but what the veins of the Crown Coal & Coke Company extend under the ground of the Empire Coal & Coke Company, therefore, there is the opportunity for us to make a mint of money in taking over this property. Were it not for the fact that we do not believe in borrowing very heavily, we would certainly take the entire property and you people, under the offer which we have authorized you to make, are securing this property at the same cost which we are paving. If every there was a ground floor proposition, this is it.

Remember this, that the people you approach must be people who have some influence in their community, so that it will be of assistance to us should we in the future, desire to secure money outside of our own assistance for the development work. This, however, as I have told you will require but very little money.

You will understand why we do not care to approach people already interested in the Crown Coal & Coke Company, from whom we could secure the money for the asking, which is that we desire to have the two companies receive twice the dividends that would be received from the one company operating all the ground.

Trusting that you will treat this confidential, I am Very truly yours,

# INTERNATIONAL DEVELOPMENT CO., Per RGB-RC

P. S.—This enclosed letter of the 3rd is worded with the idea that you can use it to make your investors believe that they are getting in on the ground floor on a proposition which the people who are closest in touch with the Crown Coal & Coke Company know is an excellent proposition. With this letter and the letters which you have from the Bank of Montreal, you can explain that even to the Bank of Montreal we have not allowed them to know that we are getting this property at this time. Of course you will understand that in handing this letter out you must explain that you are only doing it in the strictest conditions of confidence in the man to whom you show it. That he is a special man whom you trust and that we

did not write the letter with any intentions that you should show it. Therefore, he must treat it with absolute confidence.

R. G. B.

Defendants' Exhibits Nos. "158" to "174" inclusive were letters identified as received and written by A. Hopson.

Plaintiff's Exhibit No. "175."

Freewater, Ore., Jany 14th, 1910.

Mr. R. G. Belden, Spokane, Wash.

My dear Belden:-

I have just been to Milton by request of Mr. Elam and while talking to him on the streets Messrs. John and Colin McEwen, Dunlap and W. C. Hopson came up and joined in the conversation and it was decided that we had a meeting here Monday at one o'clock to decide on four others beside Mr. Vinson and myself to go up to the meeting on the 20th, think W. C. Hopson will be one of the number as they all claim that he is a well posted man in bookkeeping and they want a committee to go over the books of the company and make a report on them. Elam said that he got into a proposition once where the promoters sold their stock and let the stock of the company go unsold and by so doing the property was not developed and he thinks it a good time to look after this. He said he is not uneasy but this is a necessary precaution to take right now. So I think Freewater and Milton will be represented with at least six. I told them that there would be very little news to be had at this meeting as it has been only a few days since we gave them all we had, but we were glad to have them go and satisfy themselves, this would be quite satisfying to others too, that might be holding back on a skeptical basis.

I will come up Tuesday unless something prevents.

Yours very truly,

C. A. Bryan.

Plaintiff's Exhibit No. "176."

Letter, January 15, 1910, R. G. Belden to C. A. Bryan, urging him to read letter at meeting of intending purchasers.

# Plaintiff's Exhibit No. "177."

Letter, January 15, 1910, International Development Company, per R. G. Belden, to C. A. Bryan, relative to extension of tunnel and committee from Freewater coming to examine books, and the condition of work in the office being such as to make it impossible to have the books and accounts ready for inspection by the 20th, and suggesting the delay until February 15th.

Plaintiff's Exhibit No. "178."

Letter, September 22nd, 1909, R. G. Belden, to

410 Russell G. Belden and A. Eugene Wayland vs.

C. A. Bryan, relative preparation for prospectus, by Belden and Wayland.

Does not state what company.

Defendant's Exhibits Nos. "179" to "182" inclusive were identified.

Plaintiff's Exhibit No. "183."

Letter, January 18, 1911, International Development Company, per R. G. Belden, to John Neiderer, being the letter contained in the first count of the indictment.

Defendants' Exhibit No. "184."

Next identified.

Plaintiff's Exhibit No. "185."

Letter, January 21, 1911, International Development Company, per A. E. Wayland, to Walter J. Wood, Waitsburg, Washington, being letter set out in second count of the indictment.

Plaintiff's Exhibit No. "186."

Pages 29 & 30, Minute Book, Empire Coal & Coke Company, being minutes of the annual meeting of the board of trustees of the Empire Company, February 4, 1911, adopting the resolution contained in exhibit "185."

Plaintiff's Exhibit No. "187."

Receipt of Walter J. Woods, dated October 19,

1910, to R. G. Belden, for Certificate No. 635, Crown Coal & Coke Company, 8000 shares; certificate No. 430, Michel, for 12,000 shares; and certificate No. 343, for 12,000 shares of Empire; all understood to be personal stock.

Defendants' Exhibits Nos. "188" & "189." Identified.

Plaintiff's Exhibit No. "190."

Crow's Nest & Northern Railway, per A. E. Wayland, General Manager, to J. D. Hurd, General Manager Crow's Nest Pass Coal Company, August 24, 1908, relative inspecting terminal for railroad, and making arrangements proposed right-of-way.

Plaintiff's Exhibit No. "191."

Letter September 9, 1908, between same parties as exhibit No. 190," stating the price asked for right-of-way by Crow's Nest Pass Coal Company was exorbitant, and asking for proposition as to triangular tract described in map.

Defendants' Exhibits Nos. "192" to "224" Inclusive. Identified.

Plaintiff's Exhibit No. "225."

Nov. 18th, 1910.

Miss Mary K. Moriarty, 34 Perry St., New York, N. Y.

My dear Miss Moriarty:

In your recent letter you mentioned the fact that

the Bank of Montreal stated that there was ten miles of railroad to be constructed. This is true. We thought that you understood this condition.

As a matter of fact, the Crown Coal & Coke Company would be shipping today were it not for the building of this spur. There is no question as to the vast deposits of coal opened up, as they have already been estimated by prominent engineers at 90,000,000 tons.

The only question is the railroad and we have secured the charter for same, have completed our surveys, which have been approved by the Government; have acquired the right of way, cleared a portion of same, and have several thousand ties on hand. The object of selling the present stock is for the building of this spur and we are to commence work on this early next spring and rush it through to completion. We feel that there is absolutely no doubt in regard to being able to finance it as it will only require two months more of such sales as the last two months have had to give us sufficient capital for this work. Sales through the month of September amounted to \$61,000. Through the month of October, \$58,000, and this record has been kept up for the first half of this month, so that you see that we have demonstrated that it is thoroughly practical to raise the money necessary for his work.

It is a fact that I fully believe in my own mind,

without a question of doubt, that the stock of the Crown Coal & Coke Co. will, in a few years after operation, reach a value in excess of \$5 per share. You certainly know, Miss Moriarty, that I would not make these representations to you unless I fully believed them. Our sales are so extensive that you certainly appreciate that for the small amount your friend would invest, it would not appeal to me from that standpoint, but it is rather from the standpoint of your being the cause of their making an investment which will reap them handsome benefits. \* \*

Very truly yours,

#### RCB-RC

## Plaintiff's Exhibit No. "226."

Translation cablegram Butterfield Paris to Crown to effect at a discount of 20% to make contract for sale \$1,000,000.00 first mortgage 5% loans.

#### Defendants' Exhibit No. "227."

Paper signed by R. G. Belden to bookkeepers: "Important. Do not make an entry on our books showing Bryan got a commission, pass this all under Faires' account as it would not do to have these parties ever get wise. Don't even let his name show in Faires' account, as Faires stands this and it is not necessary."

## Plaintiff's Exhibit No. "228."

Letter, July 15, 1909, International Development Company, per R. G. Belden, to C. A. Bryan, relative his commissions, and that entries were made in books so as relationship with office did not appear, and the closest investigation would not reveal that Faires paid him any commission.

### Plaintiff's Exhibit No. "229."

Letter, July —, 1909, C. A. Bryan to R. G. Belden, relative to Hopson stating he was getting a commission and he did not want them to find out he was.

## Plaintiff's Exhibit No. "230."

Note, R. G. Belden, undated, to Miss C— (Covington): "Note proxy. Some signed the same ones. These are good. All proxies should be dated, you can do this. If any are for the wrong company scratch and write name also. Where I have changed company name, change date. Had meeting and all OK, and officers as I had them planned."

#### Plaintiff's Exhibit No. "231."

Letter, January 19, 1911, R. G. Belden to John Neiderer. "We are very much rushed on account of the meeting today, but wish to notify you that you have been elected on the advisory board of trustees of the Empire Coal & Coke Company. I took this responsibility upon myself, feeling that you would accept, without your consent.

#### Plaintiff's Exhibit No. "232."

Letter September 29, 1909, R. G. Belden, to C. A. Bryan. "You can make a definite statement now

that the tunnel will be started at once. We have engaged a very competent man, and he is on his way from Montana to take charge of this work.

\* \* The work on the railroad right-of-way will be commenced at once also. The men are already at the mine for this work."

## Plaintiff's Exhibit No. "233."

Letter, R. G. Belden, per R. C., to C. A. Bryan, January 7, 1910. "We do not feel Bryan, that it is advisable for you to sell your stock at the present time, and besides that, there is movement on foot from some of the eastern stockholders to secure the control. \* \* Everything seems to be awaiting further developments. We have satisfied ourselves conclusively however, that we have the full voting control and there is no uneasiness on our part in regard to their action.

#### Plaintiff's Exhibit No. "234."

Letter, International Development Company, per R. G. Belden, to C. A. Bryan, December 2nd, 1909, relative to Chicago firm financing Crown Coal & Coke and railway corporation, and contains the following paragraph:

"The terms of the contract still leave us in control of both the Crown property and the railroad, so that there can be no weak point which any investor should fear."

Plaintiff's Exhibit No. "235."

Letter, November 3rd, '06, R. G. Belden to F. L. Farrel, relative sale by Farrel of treasury stock of the Crown; survey for the railroad; pooling of Syndicate stock; and contains the following:

"Paragraph of the same chapter reads as follows: 'Every person holding a prospecting license may be the timber and stone on the land included in such license for the purpose of his mining operation, and for erection of buildings, on said land, but not further and otherwise.'"

## Plaintiff's Exhibit No. "236."

International Development Company, per R. G. Belden, letter January 31st, to G. W. Bush. The letter contains the following:

"For a special inducement to you on trades, I now can handle land with Michel stock, but try to get as good stuff as you can, and if it requires a little sweetening with Crown you may do so. I have 50,000 shares of this stock available for trades. Try to select as clean stuff as you can, and crowd it. I shall be liberal in the commission end.

I am very anxious that you make the next few weeks count especially heavy in your field. I am sending a telegram to "Father" at this time, instructing that no more sales are to be made except on Crown for \$1.00, Empire 50c, and a limited amount of Michel still at 35c. This will give you an opportunity to push the stock at this time."

#### Plaintiff's Exhibit No. "237."

Letter, February 14, 1911, R. G. Belden to G. W. Bush. "I am going to write to "Father" this morning and tell him to join you for a few days before seeing Mr. Dalziel. Try to have things lined up as best you can for me, and bear in mind that I have 50,000 shares of Michel stock which is available for trade. They should be unincumbered as much as possible and consist of either revenue property or good farm land. You can also use 25,000 shares of Crown in the same manner butbe sure to mix in considerable Michel along with it."

#### Plaintiff's Exhibit No. "238."

Letter, September 18, 1909, R. G. Belden to C. A. Bryan about selling stock at Freewater and the way in which to handle the farmers, and contains the following: "I think I demonstrated to you while I was there that the farmers of that locality do not object to you speaking frankly, and almost forcing them into an investment. They think that it is simply your enthusiasm and determination to make a success of your property. Therefore, they feel all the more inclined to invest. There is always the advantage of two rather than one in selling and that is this, that your will power overcomes the will power of the one man to whom you are selling."

#### Plaintiff's Exhibit No. "239."

Letter, March 16th, 1910, R. G. B. to C. A. Bryan. "Received a letter from Johnny Gorton,

of Payette, speaking as tho there was business there for us. I do not want you to mention, however, the fact that my trips down there will be in connection with stock."

### Plaitniff's Exhibit No. "240."

Letter, May 4, 1910, R. G. Belden to C. A. Bryan, instructions to agent how to make sales.

#### Plaintiff's Exhibit No. "241."

Copy letter January 10, 1910, to F. L. Dimick: "Just had a letter from some of the stockholders of the Empire and they say that they think they will send two men up after the meeting, so it is possible that they may go up about the 21st or 22nd. After they inspect the property we will ask you to cut your force down to a reasonable basis and will let you know how much per month we can figure on expending there, so that you will be able to figure this out practically. Until that time keep on your full force."

#### Plaintiff's Exhibit No. "242."

Letter, June 14, 1910, International Development Company, per R. G. Belden to A. M. Bagley, letter written at the request of Mr. Faires, containing information about the Empire Coal & Coke Company. Among others the following: "The Empire property as you will note by book of enclosed, consists of 1240 acres, and has many advantages, such as railroad rates, a very high quality of coal, and

numerous veins. Also an abundance of fine timber and water power."

## Plaintiff's Exhibit No. "243."

Letter, March 9, undated, Inland Surety Company, per A. E. W. Circular letter marked "Dict. I.S.C.-E.M." "We are enclosing you a clipping from a recent issue of the Spokane Chronicle, reporting the annual meeting of the stockholders of the Michel Coal Mines, Limited.

If you have not already talked with Mr. Northrup in regard to this proposition we urge you to do so, as only a small block of stock is now offered at 10c per share.

We advise you to secure a block at this offer, as the stock is sure to double in value several times when the company begins uncovering enormous veins of coal which underlie its property." The newspaper clipping enclosed is as follows:

# "STRUCK VEIN OF COAL ACCIDENTLY DISCOVERED ON THE PROPERTY OF MICHEL COMPANY.

The Inland Surety Company, agents of the Michel Coal Mines, Ltd., with properties adjoining on the north the Crows Nest property, in the east Kootenay district, have received a letter stating that a twenty foot vein of Bituminous coal which the company attempted to locate some time ago, was accidently discovered by a timber cruiser, by the name of

Baptice Lamareaux, while cruising on the Michel property. Lamareaux was formerly employed by the company as prospector, and spent much time looking for the vein which has just been found. Lamareaux was also formerly employed by the Canadian Pacific to do prospecting work in this vicinity.

The Michel property consists of 1280 acres on which coal has been found exposed in a number of places. The company will begin operations this spring as soon as the snow clears off which will probably be about the 1st of May. It is the intention to put five or six men to work opening the veins as a preliminary for more expensive development. A spur from the Canadian Pacific, which has been surveyed to the McDennis property adjoining the Michel property on the west, will pass through its property, and thus give transportation facilities as soon as development work has reached the stage where it will be required."

## Plaintiff's Exhibit No. "244."

Letter, January 21st, 1911, International Development Company, per A. E. Wayland, to S. Simard. "In addition to the formal notices herewith enclosed, we wish to suggest that in your trustees' meeting you carry out as nearly as possible, the general wishes of the stockholders, in reference to your election of officers.

The stockholders have generally expressed them-

selves as wanting David Still to take the position of president, and general manager, you as vice president; C. A. Bryan, treasurer; and R. Covington, secretary."

## Plaintiff's Exhibit No. "245."

Copy of letter May 20th, 1910, to R. G. Belden, marked "AEW-B." The last paragraph is as follows: "Notwithstanding these problems and surmises, let us sell coal stock—Crown, Michel, Mills or any other kind, but above all—Empire."

## DEFENDANTS' EXHIBITS, BEGINNING AT "151."

Defendants' Exhibit No. "151."

Carbon copy letter, R. G. Belden to Luke Faires, Payette, July 1st, 1909, which contains among statements relative to commission, the following:

"You will be able to deliver one share of railroad for every five hundred dollars invested, and do not misrepresent it by saying that you are selling treasury stock."

#### Defendants' Exhibit No. "153."

Letter, July 23rd, 1909, Luke Faires from International Development Company, per R. G. B., instructing him as agent to explain how coal titles are handled in British Columbia, and contains the following:

"We insist on our proposition being put plainly

to the people. I know your method well enough to know that it is not your intention to misrepresent, at the same time that does not relieve the seriousness."

## Defendants' Exhibit No. "154."

Letter, copy, International Development Company, per R. G. B., to Luke Faires, July 22nd, 1909, and contains the following: "In my previous letters I warned you as well as I did when I was in Freewater, not to make such a statement as this, 'The money goes to the Government.' Your statements in Freewater have lead those people to the wrong understanding in regard to our title. \* \* We think too much of our business to allow such statements go uncorrected, and while I know you did not make them with any intentions, yet carelessness does not excuse anything of this kind. In working for the International Development Company you must bear in mind that we are at all times trying to build up our business, and this can be done only through frank, honest, candid statements in regard to the exact conditions."

## Defendants' Exhibit No. "155."

Copy of letter, International Development Company, per R. G. Belden, to Luke Faires, July 23rd, 1909.

"I have some other good news for you, in that I have just received a letter from Bryan, after having made a thorough, plain statement of the condition of titles up north, and he feels perfectly satisfied so that the worry I had the last few days is now over."

Defendants' Exhibit No. "162." (See Page 47 for Exhibit No. "161.")

Letter, C. A. Bryan to R. G. Belden, July 5th, 1909, relative to directors' meeting and contains the following:

"He (Hopson) said that he was glad to know that we were to be real directors, and not just play directors."

## Defendants' Exhibit No. "166."

Letter, C. A. Bryan to International Development Company, September 6, 1909, inquiring if International Development Company hold controlling stock in Empire and other properties.

## Defendants' Exhibit No. "167."

R. G. Belden to Bryan, advises that it does not "but would almost control the Empire with the full support of Freewater, and Milton, Oregon. The placing of more treasury stock will effect this. The rest of the stock is very much scattered. We always rely on the support of our stockholders for our own protection. Our management has always been such that we have received their support and we are willing to rely on them. This puts us in the same position as any other stockholder."

## Defendants' Exhibit No. "169."

Letter, R. G. Belden to C. A. Bryan, December 30th, 1909, relative work being done on the coal property, and contains the following: "I do not think it advisable to put on any more men as I told you before, Demick has instructions to work all men that he can to advantage, and I do not believe that in order to make a showing that we should throw away company money just for the effect. In keeping our clients' confidence we have got to get the value out of the money expended."

## Defendants' Exhibit No. "161."

Circular letter, June 16, '09, sent out by the International Development Company, to all stockholders of the Empire at Milton, Freewater and Walla Walla:

"In regard to development as I stated, the Empire has not been opened up but its value has been demonstrated by the work on the adjoining property—that is, on the west where the Crown property has 14 veins of coal opened up within a short distance of the west side lines of the Empire property."

## Defendants' Exhibit No. "172."

Letter, R. G. Belden to C. A. Bryan, March 2nd, 1910, containing the following paragraph:

"Wayland stated that in their discussion he asked F. S. Green, (engineer) what he thot of coal being on the Empire property. Green replied, 'Any damned fool would know there was coal there.' Wayland asked the question in this way simply to draw him out."

## Defendants' Exhibit No. "179."

Letter, John S. Vinson, President, to R. Covington, Secretary, Empire, and part of the cross examination of witness John S. Vinson, contained the following:

"I hope that conditions will soon be such that none of the stocks of our valley will go begging on the market. The striking of coal on the Empire, or the floating of the R. R. Bonds would put our certificates near par."

#### Defendants' Exhibit No. "180."

Letter June 3rd, 1910, President to Secretary, Empire Coal & Coke, contains the following:

"Many of our stockholders would feel greatly relieved if coal was found in the Michel or Empire, and it seems to me that the Michel tunnel is very near the coal vein and we should drive it as fast as possible."

## Defendants' Exhibit No. "181."

John S. Vinson, to R. G. Belden. Letter, January 15, 1913. "I sincerely hope that you have succeeded at last in financing the coal property and hope we are through with our troubles in that line. I have

talked with a number of Empire men, all expressed their willingness to contribute the one mill per share if they felt that there was any certainty of development of the camp in the near future."

#### Defendants' Exhibit No. "184."

Leo R. Niederer, to Defendant Belden. Letter "I regret to say that the post office inspector with an order from Spokane came here and demanded all letters and envelopes sent to my father from you and the company during the last two or three years, asking for one in particular dated on the 18th of January, 1911. Although we could not help it we did not like to do this as it may be working against our own interests for we cannot believe that you have misled us, so until it has been proven to us that you have not been working for our interests as well as your own, we remain, as ever, yours very truly, Leo R. Niederer. P. S. Would you mind telling us who is making all of this trouble?"

#### Defendants' Exhibit No. "192."

Circular letter, D. J. Kirk, dated August 17, 1910, at Walla Walla, to the stockholders of the Empire Coal & Coke Company, describing his trip over the property at the request of the International Development Company, and has this paragraph: "We believe that the stockholder investing at 25c per share in Empire stock is getting the value of his money in the timber alone, etc.

I have given the names of those who accompanied me on the trip as this will give the stockholders a chance to take up correspondence with any of the men and verify the statements made above. (The statement contains over four closely written pages.)

Defendants' Exhibits Nos. "187," "188" & "193."

Are receipts of persons who claimed defendant Belden represented he was selling them treasury stock, the money to be used for development when each of the receipts contains the statement that the person signing it knew he was purchasing personal stock.

#### Defendants' Exhibit No. "219."

The officers and directors of the Michel, Crown Coal & Coke, Crows Nest & Northern Railway, and Empire Coal & Coke Company, from the organization of each of said companies to the present time is as follows:

## MICHEL COAL MINES, LIMITED.

#### PRESIDENT:

J. H. Hemphill, R. G. Belden, C. L. Butterfield and H. T. French.

## VICE-PRESIDENT:

T. S. Byrne, William Hart, C. L. Butterfield, R. G. Belden, A. B. Williard, A. E. Wayland. SECRETARY:

## J. T. Penn, A. E. Wayland, R. Covington.

#### TREASURER:

J. T. Penn, A. E. Wayland, A. B. Williard.

#### DIRECTORS:

1905-R. G. Belden, J. H. Hemphill, J. T. Penn, P. S. Byrne, C. L. Butterfield.

1906—William Hart, Belden, Hemphill, Penn and Butterfield.

1907—J. C. Northrup, A. B. Williard, T. J. Demorest, Hemphill, Penn, Butterfield and Hart.

1908—L. Alboucq, R. G. Belden, A. E. Wayland, Hemphill, Butterfield, Hart and Williard.

1909—T. J. Demorest, and all of 1908 directors re-elected.

1910—P. Kane, D. J. Kirk, C. K. Weismann, Butterfield, Williard, Alboucq, and Wayland.

1911—T. J. Demorest, David Still, Butterfield, Williard, Alboucq, Wayland, and Weismann.

1912—E. C. Moys, S. Simard, J. F. Higginbotham, H. D. French, Williard, Wayland and Weismann.

1913—C. A. Bryan, D. J. Kirk, C. Cooper, J. S. Vinson, Williard, Weismann and Simard.

## CROWN COAL & COKE COMPANY.

#### PRESIDENT:

Frank L. Farrel; C. L. Butterfield, and R. G. Belden.

#### VICE-PRESIDENT:

R. G. Belden, F. L. Farrel, J. Grier Long, A. Hopson, C. K. Weismann, A. E. Wayland.

#### SECRETARY:

H. McKerr-Kastan, A. E. Wayland, C. L. Hower, E. C. S. Brainerd.

#### TREASURER:

J. H. Hemphill, A. E. Wayland, A. Hopson, C. K. Weismann.

#### GENERAL MANAGER:

R. G. Belden.

#### MANAGING ENGINEER:

C. L. Hower.

#### TRUSTEES:

1906—Smith, Farrel, Ballantine, Tolles, Butterfield, Nevin, Gerwig, Belden, Anderson, McKerr-Kastan.

1907—Kerr, Smith, Farrel, Ballantine, Butter-field, Nevin, Gerwig, Belden, McKerr-Kastan.

1908—R. S. Butterfield, Barnes, Mason, Wayland, Hemphill, Belden, Farrel, C. L. Butterfield, Nevin.

1909—Same as 1908.

1910—J. Grier Long, W. F. Palmer, Butter-field, Wayland, and Belden.

1911—A. Hopson, A. Wood, Butterfield, Wayland, and Long.

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1912—Hower, Weismann, Belden, Wayland, Hopson, Butterfield, Brainerd.

1913—Elam, Wayland, Weismann, Brainerd, and Butterfield.

## CROWS NEST & NORTHERN RAILWAY COMPANY.

#### PRESIDENT:

J. Williams, A. Hopson.

#### VICE-PRESIDENT:

C. L. Butterfield.

## SECRETARY-TREASURER:

A. E. Wayland.

#### DIRECTORS:

1909—Williams, Hemphill, Butterfield, Belden and Wayland.

1910—Bowman, Butterfield, Williams, Belden and Wayland.

1911—Hopson, Hower, Belden, Wayland and Butterfield.

1912—Same as 1911.

## EMPIRE COAL & COKE COMPANY PRESIDENT:

W. J. Graham, J. S. Vinson, David Still, A. E. Wood.

### VICE-PRESIDENT:

A. S. Charlton, W. J. Graham, A. Hopson, S. Simard, A. M. Elam.

#### SECRETARY:

R. Covington, and C. A. Bryan.

#### GENERAL MANAGER:

E. J. Poteet, A. Hopson.

#### MANAGING DIRECTOR:

W. F. Sherwood, E. C. S. Brainerd.

#### TRUSTEES:

1909—A. S. Charlton, R. E. Muir, W. J. Graham (2 years), John Marsh, E. J. Poteet (3 years), Luke Faires, R. G. Belden, C. A. Bryan (2 years), J. S. Vinson, and J. B. Gordon (2 years), A. Overby, R. Covington.

1910—B. J. Kirk, A. Hopson (for other directors see above).

1911—W. F. Sherwood (2 years), David Still, A. M. Elam, S. Simard, W. J. Wood, J. H. Price.

1912—A. J. McCallam, Chas. Cooper, J. McEwen, A. E. Wayland, Sherwood, Elam reelected.

1913—C. A. Bryan, A. Hopson, E. C. S. Brainerd, J. S. Vinson, J. A. Haydon, C. K. Weismann, Chas. Cooper.

## Defendants' Exhibit No. "221."

Letter, May 14, 1908, from Oscar C. Bass, Barrister and Solicitor, Victoria, to R. G. Belden, containing instructions for procuring and surveying right-of-way.

Defendants' Exhibit No. "224."

Copy letter, January 13, 1909, R. G. Belden to Empire Stockholders, referring to report of engineer Gamble on the Crown and contains the following:

"In asking him (Gamble) in the presence of the directors of the Crown Coal & Coke Company as to the relative value of the ground on the side of the valley, on which the Empire Coal & Coke Company's property is situated with that of the Crown Coal & Coke Company, he stated that personally he would be willing to flip a coin as to which side he would prefer. Mr. Gamble was formerly with the Pittsburg Coal & Coke Company. The 1240 acres held by the Empire Coal & Coke Company is densely timbered. The majority of which belongs to the company. The timber is a very good kind and means much for the increasing of the assets of the company."

# DEFENDANTS' EXHIBITS "195" TO "218" INCLUSIVE. FROM MINUTE BOOKS DIFFERENT CORPORATIONS.

Defendants' Exhibits Nos. "195" & "196."

Pages 18 and 19, minute book, Michel Company. Adjourned first annual stockholders' meeting. The number of trustees were increased to five on motion of R. G. Belden, and the by-laws were amended so that only one trustee was required to be a resident of Spokane.

#### Defendants' Exhibit No. "197."

Page 27, Michel minute book, meeting of directors August 24, 1907. All the directors present. Engineer directed to make contract for running tunnel. 50,000 shares treasury stock authorized sold and 25c for development.

## Defendants' Exhibit No. "198."

Page 28, annual stockholders' meeting, January 20, 1908, of the Michel, 24 stockholders being present. 100,000 shares of treasury stock authorized to be sold at 25c, and directors authorized to fix price, at their discretion.

## Defendants' Exhibit No. "199."

Page 50, annual stockholders' meeting of the Michel, January 16, 1911, 15 stockholders being present. Meeting authorized directors to sell whatever stock necessary of the treasury to be used in development.

#### Defendants' Exhibit No. "200."

Page 53, annual meeting of trustees of the Michel, January 16, 1911. 25,000 shares of treasury stock authorized sold at 35c, and to pay a commission of 20%.

## (Empire Minute Book.)

#### Defendants' Exhibit No. "201."

Page 9, first meeting of stockholders, Empire Company, July 15, 1909, seven present. Treasury stock ordered sold at 25c.

#### Defendants' Exhibit No. "202."

Annual meeting of the Empire January 20, 1910. International Development Company appointed brokers but not exclusive. Agreed to pool all stock for one year. Motion carried encouraging committee of stockholders to examine books of the company at any time. 25,000 shares of stock authorized sold at 25c, and 50,000 at the discretion of the board of directors.

#### Defendants' Exhibit No. "208."

Page 38, report LeMaster Cannon & Hay to board of trustees of the Empire, which was spread upon minutes of the company.

### Defendants' Exhibit No. "209."

Pages 40-41 & 42, minutes of the board of trustees, relative to the consolidation and mistake of 2,000 feet in the line between the properties of the Crown and Empire and recommending consolidation.

## (Crown Minute Book.) Defendants' Exhibit No. "210."

Pages 9-10-11 & 12, organization meeting, September 11th, 1906. Proposition of R. G. Belden to sell 10 coal locations for \$2,000,000.00, or 1.999,991 shares of stock, and election of trustees.

#### Defendants' Exhibit No. "214."

Pages 43-3 & 44, adjourned meeting of the stock-holders, January 19, 1910. Motion of A. E. Way-

land to have the books and records of the officers audited and experted, and ratifying the action of the trustees in negotiation with Wright and Palmer to place the bonds of the company.

United States of America,

STATE OF WASHINGTON, County of Spokane.

Frank H. Rudkin, Judge of the District Court of the United States for the Eastern District of Washington, Northern Division, and the judge who presided in said court in the trial of the foregoing cause of the United States vs. Russell G. Belden and A. Eugene Wayland, do hereby certify that the matters and proceedings set out in the foregoing Bill of Exceptions consisting of pages are matters and proceedings occurring in this cause not already a part of the record therein and that said Bill of Exceptions was filed within the time allowed by law and within the time allowed by order of the Court extending such time and the same are hereby made a part of such record.

I further certify that such amendments as were proposed thereto by the plaintiff have been agreed to by the defendants and the same are hereby made a part of such record.

I further certify that the said Bill of Exceptions contains all of the matters and facts material in the proceedings heretofore occurring in the cause and not already a part of the record therein and that

the same contains all of the facts material in the proceedings as the parties have agreed to the matters therein and that at the time of the signing of this Bill of Exceptions counsel for the respective parties appeared and consented to the signing thereof without notice or application therefor by either party.

Dated this 6th day of October, A. D. 1914.

(Signed) FRANK H. RUDKIN,

Judge.

(Endorsements): Due, legal and timely service of the within proposed amendments to defendants' proposed Bill of Exceptions is admitted this 21st day of September, 1914.

(Signed) FRED MILLER,
Of Defendants' Attorneys.

Bill of Exceptions. Received at the Clerk's office September 21, 1914, and filed in the U. S. District Court for the Eastern District of Washington, after being settled, allowed and certified to by the Court, on the 6th day of October, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy.

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

## Assignments of Error.

Comes now the defendants, Russell G. Belden and A. Eugene Wayland, jointly and severally, and in connection with the defendants' writ of error and appeal herein, and makes the following assignments of error, which defendants, and each of them, aver occurred upon the trial in this cause:

1.

The court erred in overruling each of the separate demurrers of the defendants herein as to the first count, for the reason that said first count failed to set forth facts sufficient to constitute a crime under Section 5480 of the Revised Statutes of the United States of America as amended.

2.

The court erred in overruling each of the separate demurrers of the defendants herein as to the second count, for the reason that said second count failed to set forth facts sufficient to constitute a crime under Section 5480 of the Revised Statutes of the United States of America as amended.

3.

The court erred in denying the motion of these defendants and each of them, for a separate trial and in requiring defendants to go to trial together.

4.

The court erred in admitting in evidence the agreement between J. H. Hemphill, Russell G. Belden and S. W. O'Brien forming Inland Surety Company. (Ex. 7.)

5.

The court erred in occurring objection to the testimony of G. W. Jones as to conversations had by him with the defendant Russell G. Belden, and particularly in permitting the said witness to testify as to what defendant Belden stated with reference to a big strata of coal having been found on the Michel claims. (p. 40.)

6.

The court erred in overruling objections to the testimony of R. W. Lloyd and permitting said witness to testify as to a conversation with the defendant Wayland to the effect that the lots traded by the witness for Michel stock were to be used for the purpose of developing the Michel coal properties. (p. 44.)

The court erred in overruling objection to the testimony of the witness House and permitting said witness to testify as to the amount of the personal stock in the Michel Company owned by defendants or International Development Company which had been sold. (p. 56.)

8.

The court erred in overruling objections and permitting the witness House to testify as to the amount received from the sale of treasury stock in the Michel Company and the amount received from sale of the personal stock of defendants or International Development Company prior to January 1, 1912. (p. 56.)

9.

The court erred in overruling the objection of defendants to the testimony of the witness House and permitting the witness to testify as to the amount of treasury stock of the Crown Company which had been sold and the amount received therefor, and as to the amount of personal stock of defendants or International Development Company sold and the amount received therefor. (p. 92.)

10.

The court erred in overruling objection of defendants as to the evidence of the witness House and permitting the witness to testify as to the number of shares of Railway Trust stock sold and the amount realized therefrom. (p. 108.)

The court erred in overruling objection of defendants to the evidence of the witness House and in permitting the witness to testify as to the amount realized by International Development Company from the sale of Railway Trust stock. (——.)

12.

The court erred in admitting in evidence over defendants' objections, prospectus of Michel Coal Mines Limited, being Exhibit 31.

13.

The court erred in overruling the objection of defendants to the testimony of the witness House and permitting the witness to testify as to the number of shares of Railway stock purchased by the Empire Company and the amount realized therefrom and the amount thereof which was appropriated or used by International Development Company. (pp. 108-112.)

14.

The court erred in overruling objection of defendants to the evidence of the witness House and permitting said witness to testify as to the number of shares of treasury stock of Empire Company which was sold and the amount realized therefrom, and the amount of personal stock of the defendants, or International Development Company which was sold and the amount realized therefrom. (p. 109.)

The court erred in overruling the objection of defendants to the testimony of W. C. Hopson and permitting the said witness to testify to the effect that the defendant Belden had represented to him that one share of Railway stock was to be given with each Five Hundred Dollar purchase of Empire stock, and that the money was to be used for the construction of the railway and developing the mining property. (p. 115.)

#### 16.

The court erred in overruling the objection to the evidence of the witness House and permitting said witness to testify to the effect that the W. C. Hopson purchases were taken from the holdings of International Development Company and the money was received by said company, and that the money realized from the Railway stock went to the International Development Company. (p. 119.)

#### 17.

The court erred in overruling the objection to the evidence of the witness John Neiderer and permitting said witness to testify that the defendant Belden said that he came to the said witness for the purpose of raising money for the railroad. (p. 125.)

#### 18.

The court erred in admitting in evidence purported letter of January 18, 1911, purporting to have been written to said John Neiderer. (Ex. 183.)

The court erred in overruling objection of defendants to the evidence of the witness Walter J. Woods and permitting said witness to testify that defendants had stated that the money realized from the sales of stock made to said Woods would be used to develop the mining properties, and that notes received from said Woods would be used for the same purpose. (p. 129.)

20.

The court erred in admitting in evidence over defendants' objections letter of date January 21, 1911, purporting to have been written to said witness, Walter J. Woods. (Ex. 185.)

21.

The court erred in overruling objection of defendants to the evidence of said Walter J. Woods and permitting said witness to testify that the defendant Belden stated that the reason the notes were taken in said Belden's name was that he was an officer of International Development Company and that later the notes would be divided between the different mining companies. (p. 130.)

22.

The court erred in overruling objection of defendants to the evidence of C. A. Bufch and permitting said witness to testify that the defendant Belden told him that the note which the witness had given for stock was to be used to develop the coal properties. (p. 144.)

#### 23.

The court erred upon the government resting in denying the motion of the defendants, and each of them, for peremptory instructions to the jury to return a verdict in favor of the defendants and each of them as to each of the counts in the indictment, and in refusing to peremptorily instruct the jury at the close of all of the testimony in the case to find each of the defendants not guilty upon each of the counts in the indictment. (p. 165.)

#### 24.

The court erred throughout the trial in permitting the government to introduce in evidence alleged acts and declarations of the defendant Belden which occurred in the absence of the defendant Wayland and alleged acts and declarations of the defendant Wayland which occurred in the absence of the defendant Belden.

#### 25.

The court erred in instructing the jury on the law relating to conspiracy and the right of one conspirator to bind another by his acts or declarations, for the reason that it was not in issue under the indictment, nor was there any evidence sufficient to establish a conspiracy.

#### 26.

The court erred in instructing the jury concerning

the admission of circumstantial evidence for the purpose of establishing fraud as follows:

"Its admissibility is placed on the ground that where transactions of a similar character, executed by the same parties, are closely connected in point of time, the inference is reasonable that they proceed from the same motive."

#### 27.

The court erred in further instructing the jury as follows:

"The case of fraud as herein stated is among the few exceptions to the general rule that other offenses of the accused are not relevant to establish the main charge."

#### 28.

The court erred in instructing the jury as follows:

"Testimony has been offered here tending to show acts committed or declarations made by each of the defendants and I will now instruct you as to the circumstances under which acts committed or declarations made by one defendant may be used against the other. Ordinarily a person is only amenable to the criminal law for his own acts and his own conduct and not for the acts or conduct of others. There are, however, two well recognized exceptions to this rule; one is where two or more persons form a conspiracy to commit a crime and the other is where one person aids, abets, counsels, commands, induces or procures the commission of a crime by another."

The court erred in instructing the jury as follows:

"A conspiracy is generally defined as a crime of combination between two or more persons to commit some unlawful act or to commit some lawful act by unlawful means."

#### 30.

The court erred in instructing the jury as follows:

"If you find from the testimony beyond a reasonable doubt that the defendants conspired together to commit the offense charged in the indictment, then the acts of each defendant in furtherance of the common design are in contemplation the acts of both and binding on both."

#### 31.

The court erred in instructing the jury as follows:

"And if you find from the testimony beyond a reasonable doubt that either defendant aided, abetted, counseled, commanded, induced or procured the commission of the crime charged in the indictment by the other, then both defendants are equally guilty."

#### 32.

The court erred in instructing the jury as follows:

"But unless you find beyond a reasonable doubt that there was a conspiracy or that one of the defendants aided, abetted, counseled, commanded, induced or procured the commission of the crime by the other, each defendant is criminally responsible for his own act and his own conduct if guilty at all."

33.

The court erred in refusing to give the following instruction requested by defendants, to-wit:

"You are further instructed that the case upon the part of the government in so far as relates to whether there are, or are not, commercial deposits of coal on the Empire and Michel properties depends upon the opinion of its expert, and in this connection I instruct you that the defendants cannot be convicted upon the opinion of an expert as to whether there is or is not coal upon said properties and your verdict will be not guilty upon both counts in the indictment."

34.

The court erred in refusing to give the following instruction requested by defendants, to-wit:

"You are further instructed that unless you find, beyond a reasonable doubt that both the Michel and Empire properties are worthless as far as containing commercial veins of coal is concerned, your verdict will be not guilty upon both counts in the indictment."

35.

The court erred in refusing to give the following instruction requested by defendants, to-wit:

"You are instructed that the government has failed to introduce any testimony to the effect that the defendants wrote, or caused said letters set out in the first and second counts of the in-

dictment, to be written, or that they mailed, or caused the same to be mailed, and therefore your verdict must be not guilty as to both of said defendants upon both counts in the indictment."

### 36.

The court erred in refusing to give the following instruction requested by defendants, to-wit:

"You are further instructed that no evidence has been offered to show that the letters set out in the first and second counts were to be given any other or different interpretation than they purport to have upon their face and in considering them you will accord them the interpretation or meaning to which they are entitled by a reading thereof."

# 37.

The court erred in refusing to give the following instruction requested by defendants, to-wit:

"This is not a prosecution for fraud, but is one for the alleged use of the United States mails for the purpose of executing a scheme or artifice to defraud. If you should find that the defendants had devised or intended to devise any scheme or artifice to defraud in the manner as alleged in the indicment, but that the letters set out in counts 1 and 2 of the indictment were not for the purpose of executing such scheme or artifice, you will find the defendants not guilty, as to such count or counts as the case may be."

38.

The court erred in refusing to give the following instruction requested by defendants, to-wit:

"You are instructed that the letter set out in the first count of the indictment, if you find the same was deposited by the defendants or caused to be deposited in the United States mail was for the purpose only of effecting a sale of treasury stock of the companies mentioned in the letter, then as to that count you will disregard all evidence introduced in this case with reference to any representations it is claimed by the Government were made to any purchasers or prospective purchasers as to sales made as to whether the same was treasury or personal stock and any and all evidence that may have been introduced with reference to the purpose for which the proceeds realized from railroad shares of stock were to be used."

### 39.

The court erred in refusing to give the following instruction requested by defendants, to-wit:

"You are instructed that the letter set out in the first count has not been explained in any manner and you can give it only the construction which it bears upon its face and that is that it was, if so deposited with Post Office, for the purpose of executing a sale of treasury stock of the companies mentioned to John Neiderer and was not for the purpose of executing any sale of the defendants' personal stock or for the purpose of making any sale of railroad stock."

### 40.

The court erred in refusing to give the following instruction requested by defendants, to-wit:

"You are instructed as to the second count that the letter therein set forth has not in any manner been explained and if you find that the same was either placed or caused to be placed by the defendants in the United States Post Office, you can only give the said letter the construction which it bears on its face. That construction is that it was a report of the action of a stockholders' meeting of the Empire Coal & Coke Company. There has been no evidence introduced to the effect that any representation contained in said letter was in any respect false and I charge you that there was nothing improper in defendants depositing it in the mail, if you find that they did so, nor does it establish on its face any intention or purpose of any improper control or manipulation of the said Empire Coal & Coke Company."

### 41.

The court erred in refusing to give the following instruction requested by defendants, to-wit:

"You are further instructed with reference to the said second count that there is no evidence showing that the same was placed in the United States Post Office, if you find it was so placed by the defendants or caused to be so placed, for the purpose of executing any sales of the defendants' personal stock under any representation that any was treasury stock, nor for the purpose of executing any sale of railroad stock, and in considering said second count you will disregard all evidence introduced bearing upon the question of the sales of any personal stock under any representation that it was treasury and any evidence relating to the sale of railroad stock."

42.

The court erred in refusing to give the following instruction requested by defendants, to-wit:

"You are further instructed that the letter set out in the second count on its face shows that it had nothing to do with the execution of any scheme or artifice to sell any stock or for the purpose of executing any scheme or device misrepresenting the conditions of any of the coal properties and in considering any said count, you will disregard any evidence relating to any representations as to the conditions of the properties or the presence or absence of coal."

43.

The court erred in refusing to give the following instruction requested by defendants, to-wit:

"If you find from the evidence that the defendants did not misrepresent the facts as to the presence or absence of coal on the property referred to in the indictment, you must find the defendants not guilty since it is on this allegation that the indictment is founded as to both counts."

DANSON, WILLIAMS & DANSON, ROBERTSON & MILLER,

Attorneys for Defendants.

(Endorsements): Assignments of Error. Filed in the U. S. District Court, Eastern District of Washington, June 19, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy. In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff.

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

### Petition for Writ of Error.

Now comes Russell G. Belden and A. Eugene Wayland, defendants herein, jointly and severally, and say:

That on or about the 19th day of June, A. D. 1914, this court entered Judgment of Conviction herein on an indictment, in favor of the United States and against the said defendants and each of them, in which judgment and the proceedings had thereunto in this cause certain errors were committed to the prejudice of the said defendants and to each of them, all of which will more in detail appear from the Assignment of Errors which is filed with this Petition.

WHEREFORE, the said defendants Russell C. Belden and A. Eugene Wayland, jointly and severally pray that a Writ of Error may issue in their behalf out of the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit of

the United States, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in said cause, duly authenticated, may be sent to the Circuit Court of Appeals.

DANSON, WILLIAMS & DANSON, ROBERTSON & MILLER,

Attorneys for Defendants.

(Endorsements): Petition for Writ of Error. Filed in the U. S. Dist. Court, Eastern Dist. of Washington, June 19, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

In the District Court of the United States, for the Eastern District of Washington,
Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff.

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

# Order Allowing Writ of Error.

On this 19th day of June, 1914, come the defendants above named, Russell G. Belden and A. Eugene Wayland, jointly and severally, by their attorneys, and filed herein and presented to the court a petition praying for the allowance of a Writ of Error and

Assignment of Errors intended to be urged by them and each of them, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit and that such order and further proceedings may be had as may be proper in the premises.

In consideration whereof the court does allow the Writ of Error upon each of the defendants giving bond according to law in the sum of Three Thousand (\$3000.00) Dollars, which shall operate as a supersedeas bond.

# FRANK H. RUDKIN, United States District Judge.

(Endorsements): Order Allowing Writ of Error. Filed in the U. S. District Court, Eastern Dist. of Washington, June 19, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

In the District Court of the United States, for the Eastern District of Washington,

Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff.

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

Writ of Error.

(Lodged Copy.)

United States of America,—ss.

The President of the United States of America to the Judges of the District Court of the United States, for the Eastern District of Washington, Northern Division, Greeting:

Because upon the trial in the record and proceedings, and also in the rendition of the judgment of a plea, which is in the said District Court, before you, or some of you, between the United States of America, plaintiff, and Russell G. Belden and A. Eugene Wayland, defendants, a manifest error hath happened, to the great damage of said defendants, and each of them, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties, and each of them, aforesaid in this behalf, do hereby command, if judgment

be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, together with this Writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date of this writ, in the said Circuit Court of Appeals, and then and there held, that the records and proceedings aforesaid be inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord 1914, and of the Independence of the United States the one hundred thirty-seventh.

Allowed by: FRANK H. RUDKIN, Judge.

Attest: W. H. Hare, Clerk U. S. District Court,
Eastern District of Washington, Northern Division.
By FRANK C. NASH,
Deputy Clerk.

(Endorsements): Writ of Error—(Lodged Copy). Filed in the U. S. District Court Eastern Dist. of Washington, June 19, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

In the District Court of the United States, for the Eastern District of Washington,

Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff.

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

# Acceptance of Service of Petition for Writ of Error, and Order Allowing Writ of Error, Etc.

Service accepted and copy received of Petition for Writ of Error, Assignment of Errors, Order Allowing Writ of Error, Order Fixing Amount of Bail Bond, Bail Bond, Order Extending Time for Filing Bill of Exceptions, this 19th day of June, A. D. 1914.

FRANCIS A. GARRECHT, United States District Attorney.

(Endorsements): Acceptance of Service of Petition for Writ of Error and Order Allowing Writ of Error, etc. Filed in the U. S. District Court, Eastern Dist. of Washington, June 19, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

In the District Court of the United States, for the Eastern District of Washington,
Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff.

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

## Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that we, Russell G. Belden, and A. Eugene Wayland, as principals, and the Fidelity & Deposit Company of Maryland, a surety corporation organized and existing under the laws of the State of Maryland, as surety, are held and firmly bound unto the United States of America in the sum of Six Thousand Dollars (\$6000.00) lawful money of the United States of America, to be paid the said United States of America, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators and representatives, firmly by these presents.

Sealed with our seals and dated this 19th day of June, 1914.

WHEREAS, the above bounden principals have

each prosecuted a writ of error to the Circuit Court of Appeals for the Ninth Judicial Circuit, to reverse the judgment and grant each of said principals a new trial in the above entitled action by the District Court of the United States for the Eastern District of Washington, Northern Division, and the bail and supersedeas bond of each of the defendants has been fixed by the said District Court in the sum of Three Thousand Dollars (\$3000.00).

NOW, THEREFORE, the condition of this obligation is such that if the above named principals shall each prosecute his said writ of error to effect and surrender his body unto the said Court, if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect in the sum of Three Thousand Dollars (\$3000.00) as to each of the defendants.

RUSSELL G. BELDEN. (Seal) A. EUGENE WAYLAND. (Seal)

(Seal)

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

By JAS. A. WILLIAMS,
Its Attorney in Fact.

Attest: W. L. BERRY, General Agents.

Approved June 19, 1914.

FRANK H. RUDKIN, Judge.

(Endorsements): Bond on Writ of Error. Filed in the U. S. District Court, Eastern District of Washington, June 19, 1914. W. H. Hare, Clerk. Frank C. Nash, Deputy.

In the United States Circuit Court of Appeals for the Ninth District.

No. 1881.

UNITED STATES OF AMERICA.

Plaintiff.

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

### Citation.

(Lodged Copy.)

The President of the United States to the above named plaintiff and to F. H. Garrecht, attorney for plaintiff:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the Clerk's office of the United States District Court for the Eastern District of Washington, Northern Division, wherein Russell G. Belden and A. Eugene Wayland are

the plaintiffs in error, and you are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done the parties in that behalf.

WITNESS, the Hon. EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 7th day of October, A. D. 1914, and of the Independence of the United States the one hundred and thirty-ninth.

(Signed) FRANK H. RUDKIN, Judge.

Attest: W. H. HARE, Clerk.

(Endorsements): Citation—(Lodged Copy). Filed October 6, 1914. W. H. Hare, Clerk.

In the District Court of the United States, Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff.

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

# Order to Transmit With Original Exhibits.

Upon the agreement of the parties in open court, it is hereby

ORDERED that the exhibits filed in the trial of the above-entitled cause in the United States District Court, on such of them as either party may designate, be by the clerk of said court transmitted with the transcript on appeal to the United States Circuit Court of Appeals at San Francisco.

Done in open Court this 21st day of September, A. D. 1914.

(Signed) FRANK H. RUDKIN, Judge.

(Endorsements): Order to Transmit with Record Original Exhibits. Filed October 6, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy.

In the United States Circuit Court of Appeals
Ninth District.

UNITED STATES OF AMERICA,

Defendant in Error,

vs.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Plaintiffs in Error.

### Order

This cause coming to be heard on motion of the Plaintiffs in Error for an order extending the time in addition to the time heretofore granted for filing the printed record in the office of the Clerk of the Circuit Court of Appeals, and the respective parties agreeing

thereto, and the court being fully advised in the premises,

WHEREFORE: It is CONSIDERED, OR-DERED and ADJUDGED by the Court that the thirty (30) days allowed for filing the printed record in the office of the Clerk of the Circuit Court of Appeals from the date of the certifying of the Bill of Exceptions is hereby extended fifteen (15) days so that Plaintiffs in Error will have fifteen (15) days additional in which to file said printed record.

Done in open court this 14th day of October, A. D. 1914.

(Signed) FRANK H. RUDKIN, Judge.

(Endorsements): Order extending time to file

Printed Record. Filed November....., 1914.

Clerk U. S. Circuit Court of Appeals.

In the District Court of the United States, Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff.

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

# Praecipe for Transcript of Record.

To the Clerk of the above-entitled Court:

You will please prepare and send to the clerk of the Circuit Court of Appeals the following records, to-wit:

Indictment; Demurrer of both defendants; order overruling demurrers; motion for separate trials and affidavit; order denying motion for separate trials; plea and arraignment; verdicts; motion for new trial; order denying motion for new trial; motion in arrest of judgment; order denying motion in arrest of judgment; sentence; order extending time May, 1914; same, June, 1914 (2); same August 17, 1914; same for filing Printed Record; Bill of Exceptions; Petition for Writ of Error; order allowing Writ of Error; Assignment of Errors; Writ of Error; Bond on Writ of Error; Citation; order to transmit

original exhibits; Acceptance of Service and Praecipe for Transcript of Record.

(Signed) ROBERTSON & MILLER,
Attorneys for Defendants.

(Endorsements): Praecipe for Transcript of Record. Filed October 9, 1914. W. H. Hare, Clerk.

In the District Court of the United States, Eastern District of Washington, Northern Division.

No. 1881.

UNITED STATES OF AMERICA,

Plaintiff.

VS.

RUSSELL G. BELDEN and A. EUGENE WAYLAND,

Defendants.

# Clerk's Certificate to Transcript of Record.

United States of America,

Eastern District of Washington,

SS.

I, W. H. Hare, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing printed pages, numbered from 1 to 464, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, bill of exceptions, exhibits, testimony and other proceedings in the above and foregoing

entitled cause, as called for in defendants' praecipe for a transcript of the record herein, which praecipe will be found on page 464 of this record, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute my return to the annexed writ of error lodged and filed in my office on the 19th day of June, 1914.

I further certify that I hereto attach and herewith transmit the Original Citation issued in said cause.

I further certify that the cost of preparing, certifying and printing the foregoing transcript is the sum of \$371.90, and that the said sum has been paid to me by Messrs. Robertson & Miller, attorneys for defendants and plaintiffs in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Spokane, in the Eastern District of Washington, in the Ninth Judicial Circuit, this 3rd day of November, 1914, and in the Independence of the United States of America, the one hundred and thirty-ninth.

(Signed) W. H. HARE, (Seal) Clerk.

